EXHIBIT M

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	Monday, February 8, 2021
	)	9:00 a.m. Docket
Debtor.	)	
	)	BENCH RULING ON CONFIRMATION
	)	HEARING [1808] AND AGREED
	)	MOTION TO ASSUME [1624]
	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
For James Dondero:	D. Michael Lynn John Y. Bonds, III Bryan C. Assink BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900
For Get Good Trust and Dugaboy Investment Trust:	Douglas S. Draper HELLER, DRAPER & HORN, LLC 650 Poydras Street, Suite 2500 New Orleans, LA 70130 (504) 299-3300

of evidence, considering testimony from five witnesses and thousands of pages of documentary evidence, in considering whether to confirm the Plan pursuant to Sections 1129(a) and (b) of the Bankruptcy Code.

The Court finds and concludes that the Plan meets all of the relevant requirements of Sections 1123, 1124, and 1129 of the Code, and other applicable provisions of the Bankruptcy Code, but is issuing this detailed ruling to address certain pending objections to the Plan, including but not limited to objections regarding certain Exculpations, Releases, Plan Injunctions, and Gatekeeping Provisions of the Plan.

The Court reserves the right to amend or supplement this oral ruling in more detailed findings of fact, conclusions of law, and an Order.

First, by way of introduction, this case is not your garden-variety Chapter 11 case. Highland Capital Management, LP is a multibillion dollar global investment advisor, registered with the SEC pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mr. Okada resigned from his role with Highland prior to the bankruptcy case being filed. Mr. Dondero was in control of the Debtor as of the day it filed bankruptcy, but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Official Unsecured Creditors' Committee, which will be described later.

Although Mr. Dondero remained on as an unpaid employee and portfolio manager with the Debtor after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and essentially control numerous nondebtor companies in the Highland complex of companies.

The Debtor is headquartered in Dallas, Texas. As of the October 2019 petition date, the Debtor employed approximately 76 employees.

Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including CLOs and other investments. Some of these assets are managed pursuant to shared services agreements with a variety of affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the Byzantine complex of companies under the Highland umbrella.

None of these affiliates of Highland filed for Chapter 11 protection. Most, but not all, of these entities are not subsidiaries, direct or indirect, of Highland. And certain parties in the case preferred not to use the term "affiliates" when referring to them. Thus, the Court will frequently refer loosely to the so-called, in air quotes, "Highland complex of companies" when referring to the Highland enterprise. That's a term many of the lawyers in the case use.

Many of the companies are offshore entities, organized in

such faraway jurisdictions as the Cayman Islands and Guernsey.

The Debtor is privately owned 99.5 percent by an entity called Hunter Mountain Investment Trust; 0.1866 percent by the Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; 0.0627 percent by Mark Okada, personally and through family trusts; and 0.25 percent by Strand Advisors, Inc., the general partner.

The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates.

For additional liquidity, the Debtor, prior to the petition date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at nondebtor subsidiaries and distribute those proceeds to the Debtor in the ordinary course of business.

The Debtor's current CEO, James Seery, credibly testified that the Debtor was "run at a deficient for a long time and then would sell assets or defer employee compensation to cover its deficits." This Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses that Highland was constantly incurring due to its culture of litigation, as further addressed hereafter.

Highland and this case are not garden-variety for so many

11 case is its postpetition corporate governance structure. Highland filed bankruptcy October 16, 2019. Contentiousness with the Creditors' Committee began immediately, with first the Committee's request for a change of venue from Delaware to Dallas, and then a desire by the Committee and the U.S. Trustee for a Chapter 11 or 7 trustee to be appointed due to concerns over and distrust of Mr. Dondero and his numerous conflicts of interest and alleged mismanagement or worse.

After many weeks of the threat of a trustee lingering, the Debtor and the Creditors' Committee negotiated and the Court approved a corporate governance settlement on January 9, 2020 that resulted in Mr. Dondero no longer being an officer or director of the Debtor or of its general partner, Strand.

As part of the court-approved settlement, three eminently-qualified Independent Directors were chosen by the Creditors' Committee and engaged to lead Highland through its Chapter 11 case. They were James Seery, John Dubel, and Retired Bankruptcy Judge Russell Nelms. They were technically the Independent Directors of Strand, the general partner of the Debtor. Mr. Dondero had previously been the sole director of Strand, and thus the sole person in ultimate control of the Debtor.

The three independent board members' resumes are in evidence. James Seery eventually was named CEO of the Debtor. Suffice it to say that this changed the entire trajectory of

the case. This saved the Debtor from a trustee. The Court trusted the new directors. The Creditors' Committee trusted them. They were the right solution at the right time.

Because of the unique character of the Debtor's business, the Court believed this solution was far better than a conventional Chapter 7 or 11 trustee. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large, complex businesses and serving on their boards of directors in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries.

By way of comparison, in the Chapter 11 case of Acis, the former affiliate of Highland that this Court presided over two or three years ago, which company was much smaller in size and scope than Highland, managing only five or six CLOs, a Chapter 11 trustee was elected by the creditors that was not on the normal rotation panel for trustees in this district, but rather was a nationally-known bankruptcy attorney with more than 45 years of large Chapter 11 case experience. This Chapter 11 trustee performed valiantly, but was sued by entities in the Highland complex shortly after he was appointed, which this Court had to address. The Acis trustee

could not get Highland and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of a plan over Highland and its affiliates' objections in his fourth attempted plan, which confirmation then was promptly appealed by Highland and its affiliates.

Suffice it to say it was not easy to get such highly-qualified persons to serve as independent board members and CEO of this Debtor. They were stepping into a morass of problems. Naturally, they were worried about getting sued, no matter how defensible their efforts might be, given the litigation culture that enveloped Highland historically. It seemed as though everything always ended in litigation at Highland.

The Court heard credible testimony that none of them would have taken on the role of Independent Director without a good D&O insurance policy protecting them, without indemnification from Strand, guaranteed by the Debtor; without exculpation for mere negligence claims; and without a gatekeeper provision, such that the Independent Directors could not be sued without the bankruptcy court, as a gatekeeper, giving a potential plaintiff permission to sue.

With regard to the gatekeeper provision, this was precisely analogous to what bankruptcy trustees have pursuant to the so-called "Barton Doctrine," which was first articulated in an old U.S. Supreme Court case.

The Bankruptcy Court approved all of these protections in a January 9, 2020 order. No one appealed that order. And Mr. Dondero signed the settlement agreement that was approved by that order.

An interesting fact about the D&O policy came out in credible testimony at the confirmation hearing. Mr. Dubel and an insurance broker from Aon, named Marc Tauber, both credibly testified that the gatekeeper provision was needed because of the so-called, and I quote, "Dondero Exclusion" in the insurance marketplace.

Specifically, the D&O insurers in the marketplace did not want to cover litigation claims that might be brought against the Independent Directors by Mr. Dondero because the marketplace of D&O insurers are aware of Mr. Dondero's litigiousness. The insurers would not have issued a D&O policy to the Independent Directors without either the gatekeeping provision or a "Dondero Exclusion" being in the policy.

Thus, the gatekeeper provision was part of the January 9, 2020 settlement. There was a sound business justification for it. It was reasonable and necessary. It was consistent with the Barton Doctrine in an extremely analogous situation -- *i.e.*, the independent board members were analogous to a three-headed trustee in this case, if you will. Mr. Dondero signed off on it. And, again, no one ever appealed the order

approving it.

The Court finds that, like the Creditors' Committee, the independent board members here have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and with good faith. As noted previously, they changed the entire trajectory of this case.

Still another reason why this was not your garden-variety case was the mediation effort. In summer of 2020, roughly nine months into the Chapter 11 case, this Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Court selected co-mediators, since this seemed like such a Herculean task, especially during COVID-19, where people could not all be in the same room. Those co-mediators were Retired Bankruptcy Judge Allan Gropper from the Southern District of New York, who had a distinguished career presiding over complex Chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner in a preeminent law firm working on complex Chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas.

As noted earlier, the Acis claim was settled during the mediation, which seemed nothing short of a miracle to this Court, and the UBS claim was settled many months later, and this Court believes the groundwork for that ultimate

settlement was laid, or at least helped, through the mediation. And as earlier noted, other enormous claims have been settled during this case, including that of the Redeemer Committee, who, again, had asserted approximately or close to a $200 million claim; HarbourVest, who asserted a $300 million claim; and Patrick Daugherty, who asserted close to a $40 million claim.

This Court cannot stress strongly enough that the resolution of these enormous claims and the acceptance of all of these creditors of the Plan that is now before the Court seems nothing short of a miracle. It was more than a year in the making.

Finally, a word about the current remaining Objectors to the Plan before the Court. Once again, the Court will use the phrase "not garden-variety." Originally, there were over one dozen objections filed to this Plan. The Debtor has made various amendments or modifications to the Plan to address some of these objections. The Court finds that none of these modifications require further solicitation, pursuant to Sections 1125, 1126, 1127 of the Code, or Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditor or interest holder who has not accepted in writing the modifications.

Among other things, there were changes to the projections

that the Debtor filed shortly before the confirmation hearing that, among other things, show the estimated distribution to creditors and compare plan treatment to a likely disbursement in a Chapter 7.

These do not constitute a materially adverse change to the treatment of any creditors or interest holders. They merely update likely distributions based on claims that have now been settled, and they've otherwise incorporated more recent financial data. This happens often before confirmation hearings. The Court finds that it did not mislead or prejudice any creditors or interest holders, and certainly there was no need to resolicit the Plan.

The only Objectors to the Plan left at this time were Mr. Dondero and entities that the Court finds are controlled by him. The standing of these entities to object to the Plan exists, but the remoteness of their economic interest is noteworthy, and the Court questions the good faith of the Objectors. In fact, the Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor, but to be disruptors.

Mr. Dondero wants his company back. This is understandable. But it's not a good faith basis to lob objections to the Plan. The Court has slowed down confirmation multiple times on the current Plan and urged the parties to talk to Mr. Dondero. The parties represent that

they have, and the Court believes that they have.

Now, to be specific about the remoteness of the objectors' interests, the Court will address them each separately. First, Mr. Dondero has a pending objection. Mr. Dondero's only economic interest with regard to the Debtor at this point is an unliquidated indemnification claim. And based on everything this Court has heard, his indemnification claim will be highly questionable at this juncture.

Second, a joint objection has been filed by the Dugaboy Trust and the Get Good Trust. As for the Dugaboy Trust, it was created to manage the assets of Mr. Dondero and his family, and it owns a 0.1866 percent limited partnership interest in the Debtor. The Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero, and it has been represented to the Court numerous times that the trustee is Mr. Dondero's college roommate.

Another group of Objectors that has joined together in one objection is what the Court will refer to as the Highland and NexPoint Advisors and Funds. The Court understands they assert disputed administrative expense claims against the estate. While the evidence presented was that they have independent board members that run these companies, the Court was not convinced of their independence from Mr. Dondero. None of the so-called independent board members of these

entities have ever testified before the Court. Moreover, they have all been engaged with the Highland complex for many years.

The witness who testified on these Objectors' behalves at confirmation, Mr. Jason Post, their chief compliance officer, resigned from Highland after more than twelve years in October 2020, at the same time that Mr. Dondero resigned or was terminated by Highland. And a prior witness recently for these entities whose testimony was made part of the record at the confirmation hearing essentially testified that Mr. Dondero controlled these entities.

Finally, various NexBank entities objected to the Plan. The Court does not believe they have liquidated claims. Mr. Dondero appears to be in control of these entities as well.

To be clear, the Court has allowed all of these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Court questions their good faith. Specifically on that latter point, the Court considers them all to be marching pursuant to the orders of Mr. Dondero.

In the recent past, Mr. Dondero has been subject to a TRO and preliminary injunction by the Bankruptcy Court for interfering with the current CEO's management of the Debtor in specific ways that were supported by evidence. Around the

time that this all came to light and the Court began setting hearings on the alleged interference, Mr. Dondero's company phone supplied to him by Highland, which he had been asked to turn in, mysteriously went missing. The Court merely mentions this in this context as one of many reasons that the Court has to question the good faith of Mr. Dondero and his affiliated objectors.

The only other pending objection besides these objections of the Dondero and Dondero-controlled entities is an objection of the United States Trustee pertaining to the release, exculpation, and injunction provisions in the Plan.

In juxtaposition to these pending objections, the Court notes that the Debtor has resolved earlier-filed objections to the Plan filed by the IRS, Patrick Daugherty, CLO Holdco, Ltd., numerous local taxing authorities, and certain current and former senior-level employees of the Debtor.

With that rather detailed factual background addressed, because certainly context matters here, the Court now addresses what it considers the only serious objections raised in connection with confirmation. Specifically, the Plan contain certain releases, exculpation, plan injunctions, and a gatekeeper provision which are obviously not fully consensual, since there are objections. Certainly, these provisions are mostly consensual when you consider that parties with hundreds of millions of dollars' worth of legitimate claims have not

Now, after all of that, this Court believes the following can be gleaned from *Pacific Lumber*. First, the Fifth Circuit hinted that consensual exculpations and/or consensual nondebtor third-party releases are permissible. The Court was, of course, dealing with nonconsensual exculpations in *Pacific Lumber*. In this regard, I note Page 252, where the Court cited various prior Fifth Circuit authority and then stated, "These cases seem broadly to foreclose nonconsensual nondebtor releases and permanent injunctions."

The second thing that can be gleaned from *Pacific Lumber*: The Fifth Circuit hinted that nondebtor releases may be permissible in cases involving global settlements of mass claims against the debtors and co-liable parties. The Court, of course, referred to 524(g), but various other cases which approved nondebtor releases where mass claims were channeled to a specific pool of assets.

Third, the Fifth Circuit outright held that exculpations from negligence for a Creditors' Committee and its members are permissible because the concept is both consistent with 1103(c), "which implies Committee members have qualified immunity for actions within the scope of their duties," and a good policy result, since "if members of the Committee can be sued by persons unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee."

Fourth, the Fifth Circuit recognized in *Pacific Lumber* that *res judicata* may bar complaints regarding an impermissible plan release, citing to its earlier *Republic Supply v. Shoaf* opinion.

Now, being ever-mindful of the Fifth Circuit's words in *Pacific Lumber*, this Court cannot help but wonder about at least three things.

First, did the Fifth Circuit leave open the door that facts/equities might sometimes justify approval of an exculpation for a person other than a Creditors' Committee and its members? For example, the Fifth Circuit stated, in referring to the plan proponents Marathon and MRC, that "Any costs the released parties might incur defending against suits alleging such negligence are unlikely to swamp either of these parties or the consummated reorganization." Here, this Court can easily expect the proposed exculpated parties to incur costs that could swamp them and the reorganization based on the past litigious conduct of Mr. Dondero and his controlled entities. Do these words of the Fifth Circuit hint that equities/economics might sometimes justify an exculpation?

Second, did the Fifth Circuit's rationale for permitted exculpations to Creditors' Committee and their members, which was clearly policy-based, based on their implied qualified immunity flowing from their duties in Section 1103 and their disinterestedness, and the importance of their role in a

Chapter 11 case, did this rationale leave open the door to sometimes permitting exculpations to other parties in a particular Chapter 11 case besides Creditors' Committees and their members? For example, in a situation such as the Highland case, in which Independent Directors, brought in to avoid a trustee, are more like a Creditors' Committee than an incumbent board of directors.

Third, the Fifth Circuit's sole statutory basis was Section 524(e). This Court would humbly submit that this is a statute dealing with prepetition liability in which some nondebtor is liable with the Debtor. Exculpation is a concept dealing with postpetition liability.

The Ninth Circuit recently, in a case called *Blixseth v. Credit Suisse*, 961 F.3d 1074 (9th Cir. 2020), approved the validity of an exculpation clause incorporated into a confirmed Chapter 11 plan that purported to absolve certain nondebtor parties that were "closely involved" in drafting the plan. They were the largest secured creditor, a purchaser, and an individual who was an indirect owner of certain of the debtor companies. The exculpation was from any negligence, liability, for "any act or omission in connection with, related to, or arising out of the Chapter 11 cases."

By the time the appeal was before the Ninth Circuit, the only issue was the propriety of the exculpation clause as to the large secured creditor, which was also a plan proponent,

since all the other exculpated parties had settled with the appellant.

The Court, in determining that the exculpation clause was permissible as to the secured lender, concluded that Section 524(e) "does not bar a narrow exculpation clause of the kind here at issue -- that is, one focused on actions of various participants in the plan approval process and relating only to that process," Page 1082. Why? Because "Section 524(e) establishes that discharge of a debt of the debtor does not affect the liability of any other entity on such debt." In other words, the discharge in no way affects the liability of any other entity for the discharged debt. By its terms, 524(e) prevents a bankruptcy court from extinguishing claims of creditors against nondebtors over the very discharged debt through the bankruptcy proceedings.

The Court went on to explicitly disagree with *Pacific Lumber* in its analysis of 524(e), reiterating that an exculpation clause covers only liabilities arising from the bankruptcy proceedings and not of any of the debtor's discharged debt. Footnote 7, Page 1085.

Ultimately, the Court held that under Section 105(a), which empowers a bankruptcy court to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of Chapter 11 and Section 1123, which establishes the appropriate content of the bankruptcy plan, under these

sections, the bankruptcy court had authority to approve an exculpation clause intended to trim subsequent litigation over acts taken during the bankruptcy proceedings and so render the plan viable.

This Court concludes that, just as the Fifth Circuit left open the door for consensual exculpations and releases in *Pacific Lumber*, just as it left open the door for consensual exculpations and releases in *Pacific Lumber*, its dicta suggests that an exculpation might be permissible if there is a showing that "costs that the released parties might incur defending against suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." Again, that was a quote from the Fifth Circuit.

If ever there were a risk of that happening in a Chapter 11 reorganization, it is this one. The Debtor's current CEO credibly testified that Mr. Dondero has said outside the courtroom that if Mr. Dondero's own pot plan does not get approved, that he will "burn the place down." Here, this Court can easily expect the proposed exculpated parties might expect to incur costs that could swamp them and the reorganization process based on the past litigious conduct of Mr. Dondero and his controlled entities.

Additionally, this Court concludes that the Fifth Circuit's rationale in *Pacific Lumber* for permitted exculpations to Creditors' Committees and their members, which

was clearly policy-based based on their implied qualified immunity flowing from Section 1103 and their importance in a Chapter 11 case, leaves the door open to sometimes permitting exculpations to other parties in a particular Chapter 11 case besides a UCC and its members.

Again, if there was ever such a case, the Court believes it is this one, in which Independent Directors were brought in to avoid a trustee and are much more like a Creditors' Committee than an incumbent board of directors. While, admittedly, there are a few exculpated parties here proposed beyond the independent board, such as certain employees, it would appear that no one is invulnerable to a lawsuit here if past is prologue in this Highland saga.

The Creditors' Committee was initially not keen on exculpations for certain employees. However, Mr. Seery credibly testified that there was a contentious arm's-length negotiation over this and that he needs these employees to preserve value implementing the Plan. Mr. Dondero has shown no hesitancy to litigate with former employees in the past, to the *nth* degree, and there is every reason to believe he would again in the future, if able.

Finally, in this situation, in the case at bar, we would appear to have a *Shoaf* reason to approve the exculpations. The January 9, 2020 order of this Court, Docket Entry 339, which approved the independent board and an ongoing corporate

appropriate. They are entirely consistent with and permissible under Bankruptcy Code Sections 1123(a)(5), 1123(a)(6), 1141(a) and (c), and 1142, as well as Bankruptcy Rule 3016(c), which articulates the form that a plan injunction must be set forth in a plan.

The Court finds the objections to the Plan Injunctions to be unfounded, and they are thus overruled without much discussion here.

Now, lastly, the Gatekeeper Provision. It appears at Paragraph 4 of Article IX.F of the Plan and provides, in pertinent part, "Subject in all respects to Article XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 case, the negotiation of the Plan, the administration of the Plan, or property to be distributed under the Plan, the wind-down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing, without the Bankruptcy Court (1) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including but not limited to negligence, bad faith, criminal misconduct and willful misconduct, fraud, or gross negligence against a Protected Party; and (2) specifically authorizing such

Enjoined Party to bring such claim or cause of action against such Protected Party, provided, however, that the foregoing will not apply to a claim or cause of action against Strand or against any employee other than with respect to actions taken, respectively, by Strand or any such employee from the date of appointment of the Independent Directors through the effective date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in Article XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action."

This gatekeeper provision appears necessary and reasonable in light of the litigiousness of Mr. Dondero and his controlled entities that has been described at length herein. Provisions similar to this have been approved in this district in the *Pilgrim's Pride* case and the *CHC Helicopter* case. The provision is within the spirit of the Supreme Court's Barton Doctrine. And it appears consistent with the notion of a pre-filing injunction to deter vexatious litigants that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures*, 513 F.3d 181, and in the *In re Carroll* case, 850 F.3d 811, which arose out of a bankruptcy pre-filing injunction.

The Fifth Circuit, in fact, noted in the *Carroll* case that federal courts have authority to enjoin vexatious litigants

under the All Writs Act, 28 U.S.C. § 1651. And additionally, under the Bankruptcy Code, a bankruptcy court can issue any order, including a civil contempt order, necessary or appropriate to carry out the provisions of the Code, citing, of course, 105 of the Bankruptcy Code.

The Fifth Circuit stated that, when considering whether to enjoin future filings against a vexatious litigant, a bankruptcy court must consider the circumstances of the case, including four factors: (1) the party's history of litigation; in particular, whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or perhaps intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternatives.

In the *Baum* case, the Fifth Circuit stated that the traditional standards for injunctive relief -- *i.e.*, irreparable harm and inadequate remedy at law -- do not apply to the issuance of an injunction against a vexatious litigant.

Here, although I have not been asked to declare Mr. Dondero and his affiliated entities as vexatious litigants *per se*, it is certainly not beyond the pale to find that his long history with regard to the major creditors in this case has strayed into that possible realm, and thus this Court is justified in approving this provision.

One of the Objectors' lawyers stated very eloquently in closing argument, in opposing the plan injunction and gatekeeping provisions, that "Even a serial killer has constitutional rights," suggesting that these provisions would deprive Mr. Dondero and his controlled entities of fundamental rights or due process somehow. But to paraphrase the district court in the *Carroll* case, no one, rich or poor, is entitled to abuse the judicial process. There exists no constitutional right of access to the courts to prosecute actions that are frivolous or malicious. The Plan injunction and gatekeeper provisions in Highland's plan simply set forth a way for this Court to use its tools, its inherent powers, to avoid abuse of the court system, protect the implementation of the Plan, and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.

Accordingly, the Objectors' objections to this provision are overruled.

As earlier stated, this Court reserves the right to alter or supplement this ruling in a written order. In this regard, the Court directs Debtor's counsel -- I hope you are still awake; it's been a long time -- the Court directs Debtor's counsel to submit a form of order. And specifically, I assume that you've already prepared or have been in the process of preparing a set of findings of fact, conclusions of law, and confirmation order that tracks the confirmation evidence and

to win, I turned it off.

I'm sorry. That's terrible. You know, my law clerk, my law clerk that you can't see, Nate, he is from Ann Arbor, Michigan, University of Michigan, and he almost cried when I said I didn't like Tom Brady the other day. So, I apologize.

MR. POMERANTZ: Your Honor, one other comment. We had our motion to assume our nonresidential real property lease that was also on. It got missed in all the fanfare, but it was -- it has been unopposed and essentially done pursuant to stipulation. So we'd like to submit an order on that as well.

THE COURT: Okay. I have seen that, and I approve it under 365. You may submit the order. Okay. Thank you.

MR. POMERANTZ: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 10:35 a.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **02/09/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT N

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Tuesday, February 23, 2021
	9:00 a.m. Docket
Debtor.	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	**Adversary Proceeding 20-3190-sgj**
Plaintiff,	PLAINTIFF'S MOTION FOR ORDER REQUIRING JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO [48]
v.	
JAMES D. DONDERO,	
Defendant.	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	**Adversary Proceeding 21-3010-sgj**
Plaintiff,	DEBTOR'S EMERGENCY MOTION FOR MANDATORY INJUNCTION REQUIRING THE ADVISORS TO ADOPT AND IMPLEMENT A PLAN FOR THE TRANSITION OF SERVICES BY FEBRUARY 28, 2021 [2]
v.	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.,	
Defendants.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

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really was just a termination of the agreement, in accordance with the terms. And I had put the provisions up before the Court during my opening and walked Mr. Seery through. That's the basis for the --

THE COURT: Okay.

MR. MORRIS: -- termination of the agreement. It's not rejection at all.

THE COURT: Fair point.

MR. RUKAVINA: And Your Honor, there's no -- there's no -- yeah, there's no problem. There's no problem on that. We do not disagree. We do not disagree with Mr. Morris.

THE COURT: Fair point. I made the mistake of belts and suspenders, trying to fill in any hole there might be. But yes, I had the evidence that there was a termination of both agreements on November 30th. One of them had a 60-day window before it became effective, the other a 30-day. So they are terminated.

All right. Mr. Morris, anything else from you?

MR. MORRIS: No. We'll prepare a form of order.

THE COURT: All right. Mr. Rukavina, anything further from you?

MR. RUKAVINA: Your Honor, obviously, I have questions. I have reservations. I need to look at whether the Court's findings are going to be binding in this adversary proceeding. So, at this point in time, I'm just not prepared

to really say anything lest I get myself in trouble. But I thank you for your time today.

THE COURT: All right. Well, they are what they are, and I hope we're not in an argument about that down the road. But it seems like my hopes are always dashed when I want things to be worked out.

I don't want you to think my calm demeanor means I am a happy camper. I am not. I am beyond annoyed. I mean, I can't even begin to guesstimate how many wasted hours were spent on the drafting Option A, Option B. Wait. Let me pull up the exact words. Mr. Norris confirming, We withdrew Option B after the Debtor accepted it.

I mentioned fee-shifting once before in a different context, and, of course, we haven't even gotten to the motion for a show cause order declaring Mr. Dondero in contempt. I don't know if the lawyers fully appreciate how this looks. Mr. Rukavina, you said that I have formed opinions that you don't think are fair and made comments about vexatious litigation and whatnot. But while I continue, I promise you, to have an open mind, it is days like this that make me come out with statements that Mr. Dondero, repeating his own words, apparently, he's going to burn the house down if he doesn't get his baby back.

I mean, it seems so obviously transparent that he's just driving the legal fees up. It's as though he doesn't want the

creditors to get anything, is the way this looks. If he wants me to have a different impression, then he needs to start behaving differently. I mean, I can't even imagine how many hundreds of thousands of dollars of legal fees were probably spent the past two weeks on Option A, Option B, and all the different sub-agreements and whatnot. And as recently as Friday afternoon, the K&L Gates lawyer saying we have a deal, and then, oh, wait, maybe not, maybe we do, maybe we don't. And then Mr. Dondero acting like he had no clue what the K&L Gates lawyers were saying as far as we have a deal. And Mr. Norris distancing himself from having seen any of that, and I didn't have power. You know, I'm sure he had a cell phone, like the rest of us, that gets emails. I'm making a supposition. I shouldn't make that. But it just feels like sickening games.

And again, if this keeps on, if this keeps on, one day, one day, there may be an enormous attorney fee-shifting order. And, of course, I would have to find bad faith, and I wouldn't be surprised at all if I get there.

So I don't know if Mr. Dondero is listening. I suspect, if he is, he doesn't care much. But I am --

MR. DONDERO: I'm on the line, Judge.

THE COURT: Okay.

MR. DONDERO: I'm on the line.

THE COURT: I'm glad you're on the line. I cannot

overstate how very annoyed I am by hearing all these hours of testimony and to feel like none of it was necessary. None of it was necessary. Okay? There could have been a consensual deal --

MR. DONDERO: Judge, you have to pay attention -- Judge, you have to pay attention to what's going on, okay?

THE COURT: I am --

MR. DONDERO: When I was president of Highland, --

THE COURT: -- razor-sharp focused on what is going on. Okay? I read every piece of paper. I listen to every sentence of testimony. And what is going on --

MR. DONDERO: Okay. How about this, Your Honor?

THE COURT: -- is an enormous waste of parties and lawyer time and resources. People need to get their eye on the ball. Well, certain people do have their eye on the ball, but certain people do not. Okay? So we're done. You've got your divorce now. Okay? And if the operating plan is all shored up, as Mr. Norris testified, it sounds like you're in good shape. All right?

Mr. Morris, I'll look for the order from you.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(Pause.)

THE COURT: Oh, Michael?

(Court confers with Clerk.)

THE CLERK: Hello? Hang on. Mr. Morris?

THE COURT: Is anyone still there?

THE CLERK: Mr. Rukavina is still there. Mr. Rukavina, Mr. Morris, are you all still there?

MR. RUKAVINA: Judge, this is Davor.

THE COURT: All right.

MR. RUKAVINA: I think we're all wondering whether we're going to have the contempt hearing.

THE COURT: Well, yes, that's why I came back in.

MR. RUKAVINA: I can't hear you, Judge. We can't hear you.

THE COURT: I realized I -- it's 4:19 Central time. We are not starting the contempt hearing.

Mr. Morris, are you there now?

MR. MORRIS: I am. I did have one suggestion.

THE COURT: All right. I neglected to mention our other setting, but we are not going to start at 4:19 Central time. Do we want to talk about scheduling on that?

MR. MORRIS: I did, Your Honor. And it's just an idea, and I understand we've had a long day. But I was going to suggest if there was any way to just get their motion *in limine* out of the way today, so that when we come back for the evidentiary hearing parties are fully prepared. If you don't want to do it, that's fine. Otherwise, I'm available at Your Honor's convenience.

THE CLERK: All rise.

(Proceedings concluded at 4:23 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **02/24/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT O

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	Monday, May 10, 2021
	)	1:30 p.m. Docket
Debtor.	)	
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	**Adversary Proceeding 20-3190-sgj**
	)	
Plaintiff,	)	- TRIAL DOCKET CALL
	)	- DEFENDANT'S EMERGENCY MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF DEFENDANT'S PETITION FOR WRIT OF MANDAMUS [154]
v.	)	
JAMES D. DONDERO,	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Plaintiff: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Plaintiff: Jeffrey Nathan Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

permanent. I mean, I understand the -- well, right, I mean, with respect to the relief being sought, but with respect to preliminary (garbled) in attendance at the preliminary injunction hearing.

THE COURT: Okay. Unfortunately, you have connectivity issues suddenly.

MR. WILSON: You know, I've got -- I've got a different view on those things. I mean, the contempt hearing has some things --

THE COURT: Mr. Wilson, I don't know if --

MR. WILSON: And I think we lost Mr. Morris on the screen. Can you hear --

THE COURT: -- you can hear me, but we suddenly have very bad connectivity.

MR. WILSON: Can you hear me?

THE COURT: Your screen is frozen, your video is frozen, and I really didn't get any of the last two minutes.

MR. WILSON: Is it better now, Your Honor?

THE COURT: Well, I heard you say, "Is it better now?"

MR. WILSON: I'm going to log off and log back on.

THE COURT: Okay. We're going to have to -- we're going to have to cut this --

MR. WILSON: I'm going to try to log off and log on.

THE COURT: No. I'm ready to be finished with this

hearing. You need to go back and look at this, because I am leaning towards what Mr. Morris is arguing, and that is that this is really bad faith. Okay? There is no change of issues. It's been the same issue at the TRO hearing, at the preliminary injunction hearing. Okay. The motion for contempt, we were looking backwards a little at behavior. But the issues are not expanded. Okay? It's just duration of the injunction. And now a slightly skinnied-down injunction.

So, of course, I am willing to consider evidence I've heard at the TRO hearing and the preliminary injunction hearing. And I would note that on many, many, many of these exhibits, you didn't object. Or if you did, you argued it and I overruled it.

So you need to go back and look at this and think hard whether you're really going to press these issues at the trial. Okay? This is -- again, *Dondi*, we require counsel to work in good faith to streamline trials and work with people. If you can agree, if you can stipulate to evidence, that's what you need to do. And this looks like -- I don't know what it looks like. But if this is any guidance to you, it should be, if I admitted it at the TRO hearing, if I admitted it at the preliminary injunction hearing, it's fair game to consider it now.

Here's the last thing I want to say, and this is very big-picture, not unique to this adversary proceeding.

Can everyone hear me okay? I don't know if we're having connectivity issues. Can everyone hear me?

MR. MORRIS: Yes, Your Honor.

THE COURT: Can you hear me, Mr. Wilson?

MR. MORRIS: Yes, Your Honor.

MR. WILSON: Yes, Your Honor.

THE COURT: Okay. I have been pondering something the past few days. And I haven't figured out how I want to address it, but maybe Mr. Dondero's counsel and counsel from some of the Dondero-controlled entities, maybe they can listen to what I'm about to say and figure out a solution.

As you all know, there are so many law firms, so many lawyers involved now that are basically singing the same tune at a lot of these hearings as far as objections, me too, me too, me too. And so just quickly eyeballing what we have, we obviously have Mr. Dondero represented by Bonds Ellis. There is another firm that represents Mr. Dondero that filed a motion asking that I recuse myself. I can't remember the name of that firm, but I think they appealed my denial of that motion. So, I can't remember who that was. Then we have the various affiliates. We have -- well, I'll just start chronologically. Highland CLO Funding, Ltd. has historically been represented by King & Spalding. I don't know if that's -- I know there were some changes there with the ownership of that entity, so maybe they're gone. But then we have NexPoint

Can we just have an hoc committee each time?

I don't even think I listed all the law firms. I know a new law firm filed a lawsuit in front of Judge Jane Boyle recently. We've got a hearing on that coming up in June. I mean, and now you're -- I'm hearing there are going to be more. Well, if you don't figure out a way to rein it in, then I'm just going to have to get that list of who are the stakeholders in these entities, under oath, because I don't understand it. I don't understand why we need these many lawyers filing position papers.

So, all right. Well, we're going to adjourn, and I guess I'll see you next Monday, right?

MR. MORRIS: Thank you, Your Honor. Yes.

THE COURT: Okay. Thank you.

THE CLERK: All rise.

(Proceedings concluded at 3:07 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **05/11/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT P

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

BEFORE THE HONORABLE STACEY G. JERNIGAN, JUDGE

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	Case No. 19-34054-sgj11
OFFICIAL COMMITTEE OF UNSECURED CREDITORS, Plaintiff, v. CLO HOLDCO, LTD., et al., Defendants.	Adv. Proc. No. 20-03195-sgj PLAINTIFF'S MOTION for CONTINUANCE
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. JAMES DONDERO, Defendant.	Adv. Proc. No. 21-03003-sgj DEFENDANT DONDERO'S MOTION to COMPEL DISCOVERY, the TESTIMONY of JAMES P. SEERY, JR. May 20, 2021 Dallas, Texas (Via WebEx)

Appearances in 21-03003:

For Plaintiff Highland Capital Management,
John A. Morris
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, California 90067

For Defendant-Movant James Dondero:
Michael P. Aigen
Stinson, L.L.P.
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219

Bryan C. Assink
Bonds Ellis Eppich Schafer Jones LLP
420 Throckmorton Street, Suite 1000
Forth Worth, Texas 76102

Appearances continued on next page.

We — it was more just a coordination thing. We intend that he will be at all hearings before, Your Honor, you know, Friday's hearing and substantive hearings. I just — I think this is more of a coordination issue, Your Honor, and I apologize.

THE COURT: Okay.

MR. ASSINK: There has been a lot going on.

THE COURT: Oh, don't I know. There's two of us, me and my Law Clerk working on this, and there are a bunch of y'all. So, yes, I feel — I feel absolutely what you feel and more as far as a lot going on.

So let me clarify. My language that ordered Mr. Dondero to be at every hearing was in the preliminary injunction that's now superseded by the agreed order y'all announced Tuesday. So are you telling me you thought now that mandate didn't apply? Is that one of the things —

MR. ASSINK: Not — not specifically, Your Honor, —

THE COURT: — I'm hearing?

MR. ASSINK: Not specifically, Your Honor. We thought perhaps the formal mandate in the order was no longer applying, but our understanding was you would want Mr. Dondero at substantive hearings going forward, and that has been our understanding. And we would expect him to be before Your Honor at all such hearings. Part of the basis, the reasoning he's not here today was perhaps as an oversight on my part due to the scheduling, and I had a lot of deadlines yesterday and I think

it just maybe fell through the cracks, and I apologize, Your Honor.

THE COURT: All right.

MR. ASSINK: You know, we — Your Honor, —

THE COURT: Well, I'm going to say a couple of things. You know this could have been raised Tuesday, when we were here on the adversary proceeding, in which the preliminary injunction was issued, okay, it would have been — it would have been wise, it would have been very wise to raise the issue.

Second, it screams irony, if nothing else, that at a time when I have under advisement a motion to hold Mr. Dondero in contempt of Court that there would be a trip-up, the second-recent trip-up, by the way, where he didn't appear at a hearing. There was a time a few weeks ago, two or three weeks ago, can't remember what hearing it was then, but he wasn't here.

Okay. The —

MR. ASSINK: Well, Your Honor, I just want to say —

THE COURT: — the third thing I'm going to say — the third thing I'm going to say is I guess I'll issue an order in the main case now, you know, a one- or two-sentence order in the main case saying repeating the sentence that was in the preliminary injunction, that he's going to show up at every hearing. I never said only at substantive hearings. The only thing I hesitated on at all, because I've done this in other

cases, is sometimes I'll say any hearing at which, you know, the person is taking a position, okay, an opposition, an objection, you know, even if you file a pleading taking a neutral stand, if he's going to file a pleading that requires the Court and all the lawyers' attention to some extent, he's going to need to be in court. So that's something I thought about doing, but then I was reminded, that I said, no, he's just going to be at all hearings in the future.

And procedural, substantive, I never made that distinction and I never would because — because it's taking up time, it's taking up time of the Court, lawyers, parties. And if he is going to use the offices of this Court or, you know, take up the time of any lawyers, then he needs to be a part of it, okay?

MR. ASSINK: Your Honor, yes, I —

THE COURT: So I thought I made that very clear the last time he didn't show up, but I think —

MR. ASSINK: Your Honor, I apologize. You know that's certainly not our intention here. We've been rushing around. I think this is more — this is more on — on me and just the fast pace with everything. We would intend that he would be here at all hearings. We're not trying to make any exception. We're not trying to say that the preliminary injunction got rid of his obligation to be before, Your Honor. You know, we weren't clear exactly what the directive was for these kinds of hearings, or

at least perhaps I wasn't fully, and — but, nevertheless, Your Honor, we would — we would have had him be here. I think the fast pace with the hearing settings and just everything going on, it might have slipped through the cracks. It's not — there was no ill will with him not being here, Your Honor. I apologize. It's just an oversight on our part. We would anticipate that he will be here for all future hearings. You know it's no disrespect to the Court. It was not an intentional thing. We apologize, Your Honor. So I understand the Court's comments. It's — but I just want to make clear it's we're not trying to be cute, we're not trying to say that, oh, the preliminary injunction is gone, he doesn't have to be here. That's not our intention, Your Honor. It was I think just an oversight and a scheduling issue this time, but Mr. Dondero will of course appear before Your Honor in all matters going forward, so I apologize.

THE COURT: All right. Well, again, you're scheduling. You sought the scheduling, you sought the emergency hearing, and this is the second time we've had this discussion in less than a month.

All right. So, Mr. Morris, back to you. I think —

MR. MORRIS: Yeah.

THE COURT: — you were about to answer the question of if Mr. Seery is going to be produced and talk about 13 different topics, why is it a big deal to talk about these other seven

that condition subsequent was, it was the liquidation of certain assets. Since the liquidation of those assets has not been completed, by definition, no other maker could have had a note or an oral agreement or an agreement of any kind of the type that Mr. Dondero has. So yet another reason why it fails to meet the burden, they fail to meet the burden under Rule 26. Nobody could have ever had the same note forgiven or agreement, because the condition subsequent hasn't been met yet.

THE COURT'S RULING ON THE MOTION TO COMPEL

THE COURT: All right. Well, I'm going to deny the motion to compel. I don't think that the burden has been met to establish the relevance of these, I guess it's — one, two, three, four, five — six topics that are now at issue, topics 9, 14 through 17, or 20, and, you know, I don't think the proportionality standard is met here.

I do think it would be not proportionate to the needs of the case for the CEO, who came in place in 2020, postpetition, two years after these notes were executed, to have to go do research about any loans made by Highland to any officers and employees over the years and, you know, I don't know who he's going to question, what policy he is going to look into that might be some substance or evidence as to oral agreements or forgiveness. I don't think he should have any obligation to search files and interview people to figure out what the affirmative defenses and Mr. Dondero are all about or

based in. And, again, no one would have better information about his own compensation than Mr. Dondero himself.

I mean I want to stress that this comes against a backdrop of — well, it seems like some antagonism, to say the least, on the part of Mr. Dondero where Mr. Seery's concerned. It seems like it's always a fight with Mr. Seery. And you say, well, we didn't handpick him as the 30(b)(6) witness, but, you know, the motion to compel names him by name. It just — it feels like another antagonistic move.

You've got him for a deposition next Monday on 13 or so different topics. I think it is appropriate to draw the line on these six or so topics that again just don't seem relevant or proportional to the needs of the case.

All right. So, Mr. Morris, would you please upload just a simple order reflecting the Court's ruling?

MR. MORRIS: I would be happy to, Your Honor.

THE COURT: Okay. Actually I'm going to ask Mr. Aigen to do it. I'm sorry. I need to be thinking about attorney's fees and who should bear the costs of what.

So, Mr. Aigen, would you please electronically submit an order?

MR. AIGEN: Yes.

THE COURT: All right. Thank you.

All right. Well, if there's nothing else on this particular adversary, let me just double check. Any

housekeeping matters before I move onto the other adversary?

MR. AIGEN: Not from the debtor, Your Honor.

MR. CLUBOK: Your Honor, —

THE COURT: All right.

MR. CLUBOK: I don't know if you're about to move on. Your Honor, can you hear me?

THE COURT: I'm sorry, Mr. Clubok?

MR. CLUBOK: Your Honor, —

THE COURT: Were you weighing in on —

MR. CLUBOK: Yeah, I'm — I'm sorry. It's not about that proceeding, but are you about to move on beyond — beyond the Highland matters?

THE COURT: No, no, no.

MR. CLUBOK: There was another Highland matter —

THE COURT: I was next — I was next going to go to the other adversary, the dispute between the committee and seven or so defendants. And, yes, I know we have UBS I guess all day tomorrow unless anything has changed. So we'll — we'll hear before we're done any previews about tomorrow.

All right, so moving on —

MR. CLUBOK: Thank you.

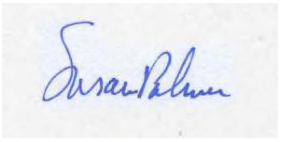
THE COURT: — the Committee versus CLO Holdco, 20-3195. We have a committee motion to basically stay the adversary proceeding for 90 days. So I will get lawyer appearances on that.

State of California)
) SS.
County of San Joaquin)

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of Texas, Office of the Clerk, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am not a party to nor in any way interested in the outcome of this matter.

I am a Certified Electronic Reporter and Transcriber by the American Association of Electronic Reporters and Transcribers, Certificate Nos. CER-124 and CET-124. Palmer Reporting Services is approved by the Administrative Office of the United States Courts to officially prepare transcripts for the U.S. District and Bankruptcy Courts.



Susan Palmer
Palmer Reporting Services

Dated May 22, 2021

EXHIBIT Q

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11** Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	Dallas, Texas Tuesday, June 8, 2021 9:30 a.m. Docket - SHOW CAUSE HEARING (2255) - MOTION TO MODIFY ORDER AUTHORIZING RETENTION OF JAMES SEERY (2248) - MOTION FOR ORDER FURTHER EXTENDING THE PERIOD WITHIN WHICH DEBTOR MAY REMOVE ACTIONS (2304)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Debtor:	John A. Morris Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Debtor:	Zachery Z. Annable HAYWARD & ASSOCIATES, PLLC 10501 N. Central Expressway, Suite 106 Dallas, TX 75231 (972) 755-7104

the Committee maintaining a two-person membership at this point.

In terms of whether the MGM transaction is a game-changer, we've not yet seen, to Your Honor's point, how all of that rolls up through the various interests that the Debtor may or -- you know, may have --

THE COURT: Okay.

MR. CLEMENTE: -- that would be implicated by the MGM transaction. If ultimately the MGM transaction has to actually occur, right? I mean, so, you know, just based on what I read in the public documents, we're not sure when that transaction may actually happen. But obviously it's a good thing for the Debtor's estate because it's going to recognize value for the estate.

In terms of whether it ultimately changes how Mr. Dondero, you know, wishes to proceed, that's entirely up to him, Your Honor. But we don't see it as something at this point that would suggest that there's an overall back to let's talk about a pot plan because of where the MGM transaction might ultimately come out.

So I don't know if that's helpful to Your Honor, but those are -- that's my perspective.

THE COURT: Well, and I'm not trying to, you know, push a pot plan on anyone.

MR. CLEMENTE: No, I understand.

THE COURT: I'm just saying it looked like an economic windfall. I just -- I don't know how much is Highland versus other entities in the so-called byzantine complex, but, gosh, I just hoped that there might be something there to change the dynamic of, you know, lawsuit, lawsuit, lawsuit, lawsuit, motion for contempt, motion for contempt.

MR. CLEMENTE: Agreed, Your Honor.

THE COURT: Uh-huh.

MR. CLEMENTE: And like I said, it was a very positive development obviously for the creditors for the Debtor. But whether it's the game-changer that Your Honor would envision, I'm not sure that I can suggest at this point that it is.

I think that, you know, obviously, we don't like to see these lawsuits continue to be filed. That's the whole point of the gatekeeper order, Your Honor.

THE COURT: Uh-huh.

MR. CLEMENTE: I didn't say anything during the hearing, but obviously the January 9th order, as Your Honor has said many times, was in the context of a trustee being appointed.

THE COURT: Right. Right.

MR. CLEMENTE: Right? So, and the July 16th order, very similar vein, it's an outshoot of that. In fact, it was contemplated in the January 9th settlement that a CEO could be

appointed.

So I think, again, it's just -- it's important, the context in which that January 9th order came into play, for this very reason, so we could avoid this type of litigation, Your Honor.

THE COURT: Uh-huh.

MR. CLEMENTE: And so again, I didn't -- I obviously didn't rise to mention that during the hearing, but Your Honor is already aware of that. I didn't need to remind Your Honor of that.

THE COURT: Uh-huh. Okay.

MR. CLEMENTE: Anything else for me, Your Honor?

THE COURT: No. Thank you.

MR. CLEMENTE: Okay, then, Your Honor.

THE COURT: Sorry I picked on you. But, all right. Well, again, I hope the message has landed in the way I hope will matter, and that is I'm going to look at your documents but I feel very strongly that, unless there's something in there that, whoa, is somehow eye-opening, I'm going to find contempt of court. It's just a matter of who and what the damages are. There's just not a thing in the world ambiguous about Paragraph 5 of the July 9th, 2020 order. So I'll get to it as soon as we humanly can get to it.

Mr. Morris, anything else?

MR. MORRIS: Nothing. No, thank you.

THE COURT: I guess I'll see you Thursday on the WebEx. Thank you.

THE CLERK: All rise.

(Proceedings concluded at 6:00 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **06/09/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT R

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Thursday, June 10, 2021
	9:30 a.m. Docket
Debtor.	
	MOTION TO COMPEL COMPLIANCE WITH BANKRUPTCY RULE 2015.3 FILED BY GET GOOD TRUST AND THE DUGABOY INVESTMENT TRUST (2256)
HIGHLAND CAPITAL MANAGEMENT, L.P.,	**Adversary Proceeding 21-3006-sgj**
Plaintiff,	DEFENDANT'S MOTION FOR LEAVE TO FILE AMENDED ANSWER AND BRIEF IN SUPPORT [15]
v.	
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.,	
Defendant.	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	**Adversary Proceeding 21-3007-sgj**
Plaintiff,	DEFENDANT'S MOTION FOR LEAVE TO AMEND ANSWER TO PLAINTIFF'S COMPLAINT [16]
TO v.	
HCRE PARTNERS, LLC N/K/A NEXPOINT REAL ESTATE PARTNERS, LLC,	
Defendant.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

MS. DRAWHORN: Uh-huh. Yes. And I understand that, Your Honor. And the issue, I think, with you -- we need to have this motion resolved, because it -- unless the Court is going to continue discovery or stay. You know, one of the reasons why we had initially requested the expedited hearing was because of the discovery is continued -- continuing to -- discovery deadlines are continuing to move. And obviously whatever the Court decides on this motion for leave to amend will determine what the scope of that discovery is.

Similarly, if the Debtor decides to amend, that could change the scope of discovery as well.

So we are open to continuing deadlines, and I think, you know, might end up filing a motion to continue. I haven't conferred with Mr. Morris yet. I suspect he's opposed, based on our prior conversations. But that's something that might be helpful, especially if the Court is concerned on how it will affect the motion to withdraw the reference, to -- maybe we continue some of these upcoming deadlines, and that might appease, you know, solve some of your concerns.

THE COURT: All right. Well, Rule 15(a), of course, is the governing rule here, and the case law is abundant that courts "should freely give leave when justice so requires." And the law is also abundantly clear that the rule "evinces a bias in favor of granting leave to amend." And again and again, cases say that leave should be granted unless there's

substantial reason to deny leave, and courts may consider factors such as delay or prejudice to the non-movant, bad faith or dilatory motives on the part of the movant, repeated failure to cure deficiencies, or futility of the amendment.

While the Debtor has presented arguments that there might be bad faith here on the part of the Movants and there might be futility in allowing the amendments because of various strong arguments and defenses the Debtor believes it has to this issue of agreements with regard to the notes that allegedly provide affirmative defenses, the Court believes the rule requires me to allow leave to amend the answer.

Now, a couple of things. I am going to require, though, that the amended answer be more specific than has been suggested. I am going to agree that if new affirmative defenses are made that there was this agreement to forgive when certain conditions happened, then there does need to be identification of who the human beings were that were involved in making the agreement, the date of any agreement or agreements, and disclose what documents substantiate the agreement or reflect the agreement. All right? So if that could --

MR. MORRIS: Your Honor?

THE COURT: Yes?

MR. MORRIS: John Morris. I apologize for interrupting, but just a fourth thing is what is the

agreement? I mean, what is the agreement?

THE COURT: Well, okay. That's fair enough. What is the agreement? I guess --

MR. MORRIS: And -- and --

THE COURT: -- that needs to be spelled out. I mean, I guess I was assuming that that would be spelled out in -- but maybe it's not. So we'll go ahead and add that.

As far as extension of the discovery, Ms. Drawhorn has offered that. I think it would be reasonable if the Debtor or Plaintiff wants that. Do you want an extension of discovery?

MR. MORRIS: What I really want, Your Honor, is a direction for them to serve this amended answer within 24 or 48 hours and grant leave to the Debtor to promptly file written discovery. We've got Nancy Dondero -- if it turns out -- and maybe Ms. Drawhorn can just answer the question right now. Who entered the agreement on behalf of the Debtor? Because I'm already taking Nancy Dondero's deposition on the 28th. And it seems to me, if they would just answer the question of whether Ms. Dondero is the person who did that, I could just add a notice of deposition and take the deposition on that date, too, and it would be, really, more efficient for everybody.

THE COURT: Ms. Drawhorn, who was the human being?

MS. DRAWHORN: Yes. It was -- yes, Nancy Dondero entered into the -- the subsequent agreement.

THE COURT: Please upload an order, Ms. Drawhorn, granting your motion with these specific requirements that I've orally worked in.

I think clients need to be careful what they ask for. I'm very concerned. And I know it was just argument and I'll hear evidence, but of all of the things that I guess -- well, I'm concerned about a lot of things, but do we have audited financial statements that didn't disclose these agreements with regard to --

MR. MORRIS: Yes, Your Honor.

THE COURT: I mean, that's -- I'm just -- you know, there's a lot to be concerned about on that point alone, I would think. But, all right. If there's nothing further, we are adjourned. Thank you.

THE CLERK: All rise.

(Proceedings concluded at 11:58 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **06/12/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT S

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Friday, June 25, 2021
	9:30 a.m. Docket
Debtor.	
	EXCERPT: MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES P. SEERY, JR. DUE TO LACK OF SUBJECT MATTER JURISDICTION (2248)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Debtor:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For CLO Holdco, Ltd. and The Charitable DAF Fund, LP:	Jonathan E. Bridges Mazin Ahmad Sbaiti SBAITI & COMPANY, PLLC JP Morgan Chase Tower 2200 Ross Avenue, Suite 4900 W Dallas, TX 75201 (214) 432-2899
For Get Good Trust and Dugaboy Investment Trust:	Douglas S. Draper HELLER, DRAPER & HORN, LLC 650 Poydras Street, Suite 2500 New Orleans, LA 70130 (504) 299-3300

any exceptional circumstances to declare the order or any of its provisions void. The Movants have put on no evidence that constitutes surprise or constitutes newly-disputed evidence. So why are there no exceptional circumstances here such that the Court might find, you know, a void order or void provisions of an order?

First, this Court concludes that there's no credible argument that the Court overreached its jurisdiction with the gatekeeping provisions in the order. Gatekeeping provisions are not only very common in the bankruptcy world -- in retention orders and in plan confirmation orders, for example -- but they are wholly consistent with the *Barton* case, the U.S. Supreme Court's *Barton's* case, and its progeny that has become known collectively as the *Barton* doctrine. Gatekeeping provisions are wholly consistent with 28 U.S.C. Section 959(a)'s complete language.

The Fifth Circuit has blessed gatekeeping provisions in all sorts of contexts. It has blessed them in the situation of when *Stern* claims are involved in the *Villegas* case. It even blessed Bankruptcy Courts' gatekeeping functions a long time ago, in 1988, in a case that I don't think anyone mentioned in the briefing, but as I've said, my brain sometimes goes down trails, and I'm thinking of the *Louisiana World Exposition* case in 1988, when the Fifth Circuit blessed there a procedure where an unsecured creditors' committee can

bring causes of action against persons, such as officers and directors or other third parties, if they first come to the Bankruptcy Court and show a colorable claim. They have to come to the Bankruptcy Court, show they have a colorable claim and they're the ones that should be able to pursue them. Not exactly on point, but it's just one of many cases that one could cite that certainly approve gatekeeper functions of various sorts of Bankruptcy Courts.

It doesn't matter which court might ultimately adjudicate the claims; the Bankruptcy Court can be the gatekeeper.

And the Court agrees with the many cases cited from outside this circuit, such as the case in Alabama, in the Eleventh Circuit, and there was another circuit-level case, at least one other, that have held that the *Barton* doctrine should be extended to other types of case fiduciaries, such as debtor-in-possession management, among others.

Finally, as I pointed out in my confirmation ruling in this case, gatekeeping provisions are commonplace for all types of courts, not just Bankruptcy Courts, when vexatious litigants are involved. I have commented before that we seem to have vexatious litigation behavior with regard to Mr. Dondero and his many controlled entities.

Now, as far as the Movants' argument that there was not just improper gatekeeping provisions but actually an improper discharge in the Seery retention order of negligence claims or

other claims that don't rise to the level of gross negligence or willful misconduct, again, I reiterate there's nothing exceptional in the bankruptcy world about exculpation provisions like this. They absolutely are a term of employment very often. Just like compensation, they're frequently requested, negotiated, and approved. They are normal in the corporate governance world, generally. They are normal in corporate contracts between sophisticated parties. And most importantly of all, even if this Court overreached with the exculpation provisions in the Seery retention order, even if it did, res judicata bars the attack of these provisions at this late stage, under cases such as *Shoaf*, *Republic Supply v. Shoaf* from the Fifth Circuit, the *Espinosa* case from the U.S. Supreme Court, and even *Applewood*, since the Court finds the language in this order was clear, specific, and unambiguous with regard to the gatekeeping provisions and the exculpation provisions.

Last, and this is the part where I said I'm going to get to this agreement that has been submitted, the Second Amended and Restated Investment Advisor Agreement or whatever the title is. I am more than a little disturbed that so much of the theme of the Movants' pleadings and arguments, and I think even representations to the District Court, have been they have these sacred jury trial rights, these inviolate jury trial rights, and an Article I Court like this Court should

annoyance or anything like that. I guess what I'm trying to do is I don't want anyone to mistake the delay in ruling on the contempt motion to mean I'm just not that -- you know, I'm not prioritizing it, other things are more serious to me or important to me, or I'm going to take two months to get to it. It's literally been I've been in trial almost all day long every day since you were here. But trust me, I'm about as upset as upset can be about what I heard on June 8th, and I'm going to get to that ruling, and I know what I'm going to do. And, well, like I said, it's just a matter of figuring out dollars and whom, okay? There's going to be contempt. I just haven't put it on paper because I've been in court all day and I haven't come up with a dollar figure. Okay?

So I hope -- I don't know if that matters very much, but it should.

All right. We stand adjourned.

(Proceedings concluded at 3:35 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **06/29/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT T

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11** Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	Dallas, Texas March 1, 2022 1:30 p.m. Docket - REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH PATRICK DAUGHERTY [3088] - REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER FURTHER EXTENDING THE PERIOD WITHIN WHICH IT MAY REMOVE ACTIONS [3199]
ELLINGTON, Plaintiff, v. DAUGHERTY, Defendant.	**Adversary Proceeding 22-3003-sgj** STATUS CONFERENCE (NOTICE OF REMOVAL)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Debtor: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For Scott Ellington: Debra A. Dandeneau
Laura R. Zimmerman
BAKER & MCKENZIE, LLP
452 Fifth Avenue
New York, NY 10018
(212) 626-4875

consent to Bankruptcy Court adjudication or are we going to have a motion for remand.

So I don't know what we're going to attempt to accomplish here because later in this month we have set a hearing on Mr. Ellington's motion for remand and abstention. So I'll ask counsel, did you all view this setting as something that, you know, we needed to address issues on, or is it premature before we have the hearing on the motion for remand and abstention?

MR. YORK: Your Honor, this is Drew York from Gray Reed. I represent Mr. Daugherty in the adversary action. And I agree with the Court that it is, based upon the motion to abstain and remand that was filed, it's premature. We set the status conference at the Court's request immediately after we filed the removal notice. I think we can address all of the issues at the hearing at the end of the month.

THE COURT: All right. Ms. --

MS. DANDENEAU: Your Honor?

THE COURT: Go ahead.

MS. DANDENEAU: We agree with Mr. York and the Court, Your Honor.

THE COURT: Okay. Well, so I guess we will see you at the end of the month. I think, what is it, maybe March 28th, something like that? March 29th?

MS. DANDENEAU: I believe it's March 29th.

THE COURT: Okay. And you know that I tend to sometimes share my views just to see if it will spur a fit of reasonableness or encourage people to settle or walk away. I'm pretty exasperated with that attempt in this case. But this litigation is -- I'm going to call it the stalking lawsuit. Okay? Every time -- I don't know how much longer it will be in my court, but as long as it's in my court I'm going to call it what it is, a stalking lawsuit. It is one grown man accusing another grown man of stalking. You know, it's just embarrassing to me, and it should be embarrassing to those involved.

Now, I have read the lawsuit and I have read that Mr. Ellington accuses Mr. Daugherty of driving by his house, driving by his father's house, driving by his sister's house, driving by his office, 143 sightings, he's taking pictures. And you know, if that's true, again, that's embarrassing. If -- I don't even know what to say except this is embarrassing. One grown man accusing another grown man of stalking. Okay? A statute, by the way, that was designed to protect, you know, ex-wives, girlfriends, battered women, from abusive men. You know, gender doesn't matter, but wow. It's just -- I don't know what to say except people should be embarrassed, and so that's what I'm going to say.

I don't know if it's going to make a whit of difference in anyone's litigation posture. But we'll come back on March

29th and we'll do what we need to do on the motions before the Court.

(Proceedings concluded at 3:41 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **03/07/2022**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

29th and we'll do what we need to do on the motions before the Court.

(Proceedings concluded at 3:41 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **03/07/2022**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT U

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	August 31, 2022
	9:30 a.m. Docket
Reorganized Debtor.	
	STATUS CONFERENCE RE: MOTION FOR FINAL APPEALABLE ORDER FILED BY JAMES DONDERO [3406]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Reorganized Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 11th Floor Los Angeles, CA 90067 (310) 277-6910
For the Reorganized Debtor:	Melissa S. Hayward HAYWARD, PLLC 10501 N. Central Expressway, Suite 106 Dallas, TX 75231 (972) 755-7104
For James Dondero, Movant:	Michael Justin Lang CRAWFORD WISHNEW & LANG, PLLC 1700 Pacific Avenue, Suite 2390 Dallas, TX 75201 (214) 817-4500
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062

And when he, being Judge Kinkeade, after the briefs were filed, he obviously was looking at it, he questioned his jurisdiction, he requested briefing on the jurisdiction, because in that order that he sent out requesting the briefing, he pointed out -- you know, one of the issues he pointed out was the Court's language, the reservation language in the order. And, again, Highland argued that because of that language, among other things, that language made the order not final.

So all we're saying, all we're asking is just remove that language so when we file the writ of mandamus that argument isn't there. The Court is done dealing with the issue. Nobody can disagree with it.

You know, nobody -- Highland is not agreeing that we, you know, can seek mandamus, so I'm not saying that. And I'm not asking the Court to agree to that. Mandamus is a -- we believe is an option. It's still on the table. And we're just dealing with one issue that came up before and just trying to head it off before -- so that we don't have to come back down and ask the Court to remove it later.

THE COURT: All right. Mr. Pomerantz, what do you want to say about this?

MR. POMERANTZ: So, Your Honor, this is extremely frustrating. I know Your Honor had said you didn't want to waste Court time. There has already been a tremendous amount

of Court time that's wasted.

When we got this motion, it was a head-scratcher. We read it as seeking way more things than what Mr. Lang is saying now. If he had called up and asked us if we had any issue, subject to Your Honor's agreement, to remove that last sentence, we would have said we don't, because the briefing before the District Court and the District Court's decision have really nothing to do with that last sentence. Maybe the -- Judge Kinkeade mentioned it in his December order, but it's clear, as Your Honor mentions, from the reading of the District Court opinion that it is irrelevant.

And the argument that the Court, the District Court which denied interlocutory appeal is somehow, once that sentence is eliminated, going to entertain and grant a writ of mandamus is farcical. It's just not going to happen. And unfortunately, what's going to happen is we're going to have to spend more time, more money, and more effort.

And Your Honor, I know the motion to strike has been resolved, but I'd just like to mention it, because this is -- continues to be frustrating from the Highland side. They filed an appendix that sought to slip in three letters written by attorneys for various Dondero entities that were essentially a smear campaign, a smear campaign on Mr. Seery, a smear campaign on the Independent Directors, incidentally, which may be actionable in its own right.

That had nothing to do with bias. They wanted to slip that in, somehow it would get into the appellate record, if and when they ever got to an appeals court.

So what do we do, Your Honor? We called them up, called Mr. Lang up and said, will you withdraw the letters? There's no basis for those to be included in the appendix. He said no. Said, okay, will you make the deponents -- the people who wrote the letters available for deposition? Wouldn't agree to that, either.

And then we go to the time and the money, we file our motion to strike, and lo and behold, which has become a considerable pattern in this case, Your Honor, what does Mr. Lang do? He calls up and says, I will withdraw the letters. Okay? That's aside. We got what we wanted. There's nothing we can do. But it is kind of frustrating, how that -- how that played out.

Your Honor, this motion, to the extent it asks for that sentence to be removed, that's fine. Again, we think it's a legal nullity. What Mr. Lang asked for in his motion is for Your Honor to issue a final order. Your Honor can't determine whether your order is final. We've made that point in our opposition. It seems maybe now Mr. Lang is walking back on that. There's nothing you can do. Your Honor can issue an order; it'll be up to the District Court.

With respect to the supplement, Your Honor, as we put in

the record, we think all the quote/unquote evidence that was submitted just is a severe mischaracterization of the record. And it's important, Your Honor, that not only does the -- we agree that the evidence can come in, but we think Your Honor has to make a determination whether those additional allegations of bias and evidence do in fact demonstrate bias. What we think Mr. Lang wanted to do, or the Appellants wanted to do, or the Movants, they wanted to have that information come in and argue at first blush to the Appellate Court that that is bias, without having had Your Honor make the initial determination, as you would have if there was a motion to reconsider, as you would have if there was a new motion.

And so we think it's very important that Your Honor consider those additional allegations. We think categorically they do not demonstrate any bias, and our Exhibit A goes through each item and points out the severe mischaracterizations.

So, Your Honor, we've wasted a lot of time. We've wasted a lot of money. But if all they want is to remove that sentence, supplement the record, have Your Honor deny the motion yet again after considering the additional evidence, we do not have an opposition to that. But it was -- kind of took a long time and a lot of money to get to this place.

Thank you, Your Honor.

THE COURT: All right. And Mr. Lang, on the subject

of it took a lot of time and a lot of money, estate resources, to get to this place, I just want to note a couple of things. And I guess I'm happy to hear any response to these things that I feel very frustrated about.

Again, my focus at this point is judicial resources as well as estate resources. And no judge, no judge looks lightly on a motion to recuse. Okay? Any judge, I would think, is going to have some self-introspection. Like, oh my goodness, what would motivate someone to think this needs to be urged?

But, so on the topic of -- again, I want you to respond to this, Mr. Lang -- my concern about judicial resources and estate resources.

The timeline here -- and I always talk about timelines, I know -- but this Court signed the confirmation order in this case February 22, 2021, and your motion to recuse was filed about a month later, March 18, 2021. Now, here's the first thing I'll mention about judicial resources and estate resources. Your motion and brief to recuse included an appendix that was 200 -- no, excuse me, 2,722 pages long. Okay?

So any judge, again, has to take it seriously when a motion to recuse is filed. And the standard is I have to stand back and look at would a reasonable person have concerns here. So I can't just say, I know I'm not biased, I don't

think I'm biased; I have to look at what a reasonable person might think.

So you presented to me a 2,722-page appendix for me to do my job and look at what would a reasonable person think. So, then would it raise a doubt in the mind of a reasonable observer as to the judge's impartiality?

So I think here's another point that goes to judicial resources. I had my law clerk, just out of curiosity, count up for me how many orders that I had signed as of the day that the motion to recuse was filed, March 18, 2021, and I had presided over the bankruptcy case for 15 months at that point, but it had been in Delaware for two months before Dallas. On the day you had filed your motion to recuse, March 18, 2021, I had signed 263 orders in the Highland bankruptcy case and the adversary proceedings. It's a lot more now, of course. But so I suppose, if I was really to do my job thoroughly, I might look not merely at your 2,722 pages of appendix attached to your motion to recuse, but all 263 orders I had entered to see, hmm, would a reasonable observer question my impartiality?

So, anyway, this is all about judicial resources and estate resources. So, going down the timeline, March 23, 2021, five days after you filed the motion to recuse -- after, I will tell you, I won't say I dropped everything to pore through this, but spent a lot of time -- I issued an order

denying the motion to recuse.

Now, here's inside baseball, okay, if there ever was: The last sentence, reserving the right to supplement or amend, here's why I did it. I didn't know it would cause a brouhaha. Maybe I didn't give it enough thought. But in reading the case law during those many days and hours I spent focusing on your motion to recuse, I realized that most of the case law says you don't have to have a hearing, okay, the statute doesn't require a hearing, the case law says you don't have to have a hearing. And I cited some of that my order. But I thought, these Movants, after seeing this order, they may come back and say, you didn't give us our day in court. We wanted a hearing. We weren't just going to rely on our 2,722-page appendix. We wanted to put on witnesses.

So I didn't have to stick that sentence in there, but I was just sort of anticipating what the Movants might do.

Okay. So, live and learn. I guess I won't, if I'm ever confronted with the situation again, do that. But that's what that was about.

So, my law clerk went and looked at the appellate record in the past few days, because, I mean, again, head-scratcher. We were trying to get a feel for how big a deal was this sentence, okay, to the District Court, if at all. But anyway, we happened to note that in July, July 20, 2021, the District Court record on appeal was supplemented with 1,001 more pages

of record. So I guess, goodness gracious, poor Judge Kinkeade and his staff, they had 3,723 pages of appendix. I don't even know if that's all. You know, I don't know.

But so Judge Kinkeade dismissed the appeal because he said my order was interlocutory on February 9, 2022, and then we didn't see a motion for rehearing or an appeal to the Fifth Circuit or a petition for writ of mandamus to the Fifth Circuit. Five and half months later, this new motion for final appealable order and supplement to the motion to recuse is filed, containing 365 more pages. And then I see that, Mr. Lang, you filed an amended motion to take out certain of the items, with the agreement, the stipulation that was reached with Debtor's counsel, so it's now a 154-page appendix.

But I should add that, in Highland's objection to your latest motion, they attached 86 exhibits, and I couldn't count all those exhibits, but it was more than 5,500 pages. And it was, as I understood it, sort of almost like a rule of optional completeness. If you're going to submit these 154 pages to supplement the record, we think you need to attach more than snippets of a transcript here and there. You need to have the whole context.

So, anyway, I -- you know, look at what you're doing. I'm just -- and I guess I could totally appreciate and understand if there had been a brief order from Judge Kinkeade saying, because of that one sentence, this is an interlocutory order,

no leave to appeal an interlocutory order is warranted, end of order. And, frankly, when you filed your motion, this latest motion, having not seen Judge Kinkeade's order, I thought that's what it was going to say.

So, from the tone of your motion, it sounded like that's all his order was about, just: I have a problem with this last sentence, it makes the whole order interlocutory. And then I go back and read it and he gives four or five different reasons why an order denying a motion to recuse is interlocutory until the end of the case. I know that's a bizarre concept in the world of bankruptcy, but he considered this is even the rule in the world of bankruptcy.

So, anyway, help me to understand why this isn't unnecessary carpet-bombing the Court, me and whoever might hear your petition for writ of mandamus, and the Debtor estate, carpet-bombing us with paper and causing us to expend resources. And, again, we've got this backdrop of the original motion to recuse being filed 15 months after I started presiding over the case and after I had signed 263 orders.

Please, Mr. Lang, please help me to understand if this is warranted. Why, I mean, help me to understand why this is not wasting resources in your view and why this isn't just some strategy. Again, I'm trying to not play psychologist, I'm really trying to understand why you think this is fine.

MR. LANG: Well, Your Honor, we've moved to recuse, and we've stated the grounds, and we have put in documents from the record that we think support those grounds. We have not unnecessarily carpet-bombed. We've cited to the various transcripts. The length of the record is directly related to the length of the transcripts mostly, the various transcripts throughout the proceeding. And so, you know, with respect to the 2,722 pages of appendix, most of those are just complete copies of transcripts.

But again, we're just creating our record to support our position on our motion. And the current motion is eight pages. It's got reference to the additional grounds that we've set forth that we think support our motion. And we attached the various documents and transcripts that, again, support -- we think support our position. And we're making our record for appeal.

And as far as Mr. Pomerantz and the withdrawing of the letters, you know, I was getting ready for trial when Mr. Morris called. And he said, they're hearsay. We had a brief conversation. I disagreed. They filed their motion. When I got the time to look at it, I read through it, and Mr. Morris and I had a conversation, and we decided, you know what, we don't need them, we'll pull them out. Let's just do away with this issue. It's not worth the time to deal with it.

I'm sorry they had to file their motion. But, you know, I

couldn't drop everything at that moment to look through. And again, the reason that he gave was hearsay. So, you know, it's not gamesmanship. It was just, look, you know, when we got down to looking at it, when I looked at it, I decided it wasn't worth the effort and the hassle, and we agreed to pull them down and withdraw them. And that's why I filed the amended motion.

As far as the current appendix, Your Honor, we're just making a record. You know, we're trying to get this thing reviewed. We're making sure the Court is aware of all the grounds and having considered all the grounds and all the actions that we think support our motion. We're giving the Court the opportunity to look at it, and then just enter the order without that language and we'll deal with the mandamus.

Again, the issue is ultimately going to be reviewed. We're trying to get it reviewed. And you're right, you know, we don't have to, you know, you didn't have to have a hearing on the first deal, you don't have to have a hearing on this one.

THE COURT: Okay.

MR. POMERANTZ: Your Honor, this is -- this is just one more match in furtherance of Mr. Dondero's stated desire, as you've heard many times, to burn the place down. We would have hoped, and I guess it would have been naïve to hope, as I know Your Honor has hoped throughout the case, that at some

point in time the Dondero side would stop blaming Your Honor, blaming Mr. Seery, blaming the estate, and actually look at what he can do to put an end to this. Pay his notes, stop raising frivolous claims, so everyone can go on with his life. That's what the estate wanted to do and wants to do. That's what Mr. Seery wants to do. Unfortunately, Mr. Dondero doesn't seem capable of it, and this is just one more match on the flames. And Mr. Lang, doing his job, following his client's wishes, is just one more player in that. But it is extremely frustrating.

THE COURT: Okay. All right. Here's what I'm going to do. First, I'm simply going to deny the pending amended motion for final appealable order and supplement to motion to recuse, as it is procedurally improper as framed. Okay? It was kind of like a Rule 54 motion. It was kind of like a new motion to recuse. It was kind of like a Rule 59 motion for, you know, new -- to put in new evidence, have a new trial, but way untimely for that.

So I'm just denying the motion that's before me. Okay? And by doing that, I mean, I guess, I guess the stipulation and order that's before me on the motion to strike and the motion to compel, I guess I'll -- it's in my queue, I'll sign it, unless someone tells me there is a reason it doesn't make sense to sign it.

But I'm denying the motion before me. But just so it's

clear, Mr. Lang, it's without prejudice to you either filing a simple Rule 54 motion, without attachments, that simply asks me to strike the last sentence of my original order denying your motion to recuse from March 2021.

If you give me a simple Rule 54-based motion simply asking me to strike that sentence, I'll sign it. Without a waiting period. Without a hearing. And I assume Mr. Pomerantz doesn't have a problem with that.

MR. POMERANTZ: That is correct, Your Honor. If all that motion asks for, we would not oppose that.

THE COURT: Okay. It's also, my ruling today denying your motion, is without prejudice to you filing a new motion to recuse, if that's what you want to do, to start this over and supplement the record.

But, you know, proceed as you will. This Court is going to do its duty. And, well, if you want to do that, you do that, but I'll have a more elaborate order if I have to rule on a new motion to recuse. Among other things, I'm going to point out to the Court above, whoever hears this, that because I think timeliness was always an issue I raised in your original order, you know, filing a motion to recuse after confirmation, 15 months after this judge was assigned to the case, and after the judge had signed 263 orders.

You know, we have case authority, as I'm sure you researched and know, that talk about timeliness. Even though

it's not baked into the statute, 28 U.S.C. Section 455, it is a factor. And so this is not *A v. B* litigation. This is a case affecting many, many people. And at some point, don't we have to wonder why a motion would be filed after 263 orders? If your clients legitimately think there was bias, I don't know why they didn't raise the issue way, way earlier in the case.

And that's why these appendices are so huge, right? It dovetails with the timeliness. Okay? Fifteen months. There's a huge, huge, huge, huge record.

So, anyway, do you have any questions, Mr. Lang?

Again, I will say it for at least the third time this morning: I'm worried about judicial resources and estate resources. Okay? And, you know, I have to worry about I'll loosely call my bosses, okay, you know, the courts that grade my papers. The District Court who hears appeals and hears petitions for writ of mandamus. The Fifth Circuit. They're going to get frustrated with me if -- well, you know, if, for example, I had ruled on this motion before me today, a clearly procedurally defective motion. And if I just willy-nilly let people put things in the record without a procedurally proper basis, it just makes more work for the Court of Appeals, right?

So it's not just about the lawyers here. It's not just about me and my staff. It's about the people who grade my

papers. If I granted your motion as it's pending here before me today, I have every reason to think, whether it's Judge Kinkeade or the Fifth Circuit, they would think, what is this judge doing? Okay? So it's just procedurally defective, what you filed. Okay? But, again, you've got the ruling. Do you have any questions?

MR. LANG: I don't.

THE COURT: We're adjourned.

THE CLERK: All rise.

(Proceedings concluded at 10:25 a.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **08/31/2022**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT V

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE:	.	Case No. 19-34054-11(SGJ)
	.	
HIGHLAND CAPITAL	.	Earle Cabell Federal Building
MANAGEMENT, L.P.,	.	1100 Commerce Street
	.	Dallas, TX 75242-1496
	.	
Debtor.	.	Monday, September 12, 2022
. . . . .	.	9:40 a.m.

TRANSCRIPT OF HEARING ON MOTION TO WITHDRAW PROOF OF CLAIM #146 BY HCRE PARTNERS, LLC (3443) AND REORGANIZED DEBTOR'S (A) OBJECTION TO MOTION TO QUASH AND FOR PROTECTION [DOCKET NO. 3464] AND (B) CROSS-MOTION TO ENFORCE SUBPOENAS TO ENFORCE SUBPOENAS AND TO COMPEL A DEPOSITION (3484)

BEFORE HONORABLE STACEY G. JERNIGAN
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

TELEPHONIC APPEARANCES:

For Highland Capital Management, L.P.:	Pachulski Stang Ziehl & Jones LLP BY: JOHN MORRIS, ESQ. 780 3rd Avenue, 34th Floor New York, New York 10017
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Proceedings recorded by electronic sound recording, transcript produced by a transcript service.

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we've already said the Court should allow us to withdraw the proof of claim and condition it with prejudice.

There is no other lawsuit out there. There is no other position being taken anywhere. Frankly, Your Honor, the reason why I said admit the exhibits and I question their relevance is because none of them go to actual legal prejudice. Can't show it, hasn't shown it, hasn't demonstrated it. It says they did a lot of work, gave you the greatest hits of some email, but quite frankly, Your Honor, that goes to merit, not legal prejudice. That goes to, I believe, part of their story as to what happened.

The story that matters to me is we think things were going to happen during the estate, he's right. We didn't move for them. We looked back at it and said we don't need the proof of claim anymore, we should withdraw it. That's the only thing that's happened, and that's why we're here. We don't think he's entitled to discovery as to why we withdrew the proof of claim.

It's his burden to show legal prejudice. He can show it or he can't. He hasn't.

THE COURT: Okay.

MR. GAMEROS: The estate hasn't.

THE COURT: Mr. Gameros?

MR. GAMEROS: (Indiscernible) Mr. Dondero.

THE COURT: I have a question. I mean I'm looking at

your pleading, your motion to withdraw the proof of claim, and I'm looking at this wonderful chart you have on Page 7 saying here are the standards under Bankruptcy Rule 3006, you, Court, should consider. They were articulated in the Manchester case.

And it's not merely about is there any prejudice to the estate. I mean you set forth five factors. One is "reason for dismissal." One is diligence in bringing the motion to withdraw. One is undue vexatiousness. One is the matter's progression including trial preparation. One is duplication of expense of relitigation.

This is your own authority, which I believe actually is correctly articulating the standards. It's not just about prejudice. Yes, I agree that some of the case law has zeroed in on that one in particular. But I mean you say yourself reason for dismissal is a factor the Court must consider.

MR. GAMEROS: That's correct, Your Honor. Those are the factors, and I think our analysis on them is correct.

If we go all the way to trial and the result is that our proof of claim is denied, we're in the same position we are right now. So why should the parties, the estate, and the Court go through that exercise?

THE COURT: Okay. Well, that's another issue, I think, other than the reason for dismissal. But a follow-up question to what you just said is this.

Would you agree to a condition on the withdrawal of

your proof of claim that your client agrees that Highland has a 46-point whatever it was percent interest in SE Multifamily Holdings and your client waives any right in the future to challenge that interest?

MR. GAMEROS: Your Honor, if that's what the Court wants to put in an order and I have a chance to confer with my client on it, I'm pretty sure that would be agreeable.

THE COURT: Today's the day. I'm not going to continue. I've got, you know, the whole day booked if I needed it because I wasn't sure what you all were going to want to put on.

MR. GAMEROS: Your Honor, we'd agree with that.

MR. MORRIS: Your Honor, I'm sorry to interrupt, but a waiver of any appeal, too. I just hard that if that's what you want to put in the order, that's okay. But this case has to end, and that's what we're looking for.

We're a post-confirmation estate that will not go forward with the possibility hanging over its head that it may be divested of this asset. That is what this proof of claim and this dispute is about.

And what the debtor needs in order to avoid legal prejudice is the complete elimination of any uncertainty that it owns 46.06 percent of SE Multifamily. And if HCRE is not willing to give that comfort today, we again renew our request for a direction that the three HCRE witnesses appear for

substantive depositions and we get this on the trial calendar.

MR. GAMEROS: Your Honor, we'll agree to it.

THE COURT: Well, you know what, this is such a big deal I really need a client representative to say that. It would be that --

MR. GAMEROS: I don't have one here today, but I can get you one.

THE COURT: How soon --

MR. GAMEROS: Do you want me to file a stipulation or an affidavit?

THE COURT: Pardon?

MR. GAMEROS: Do you want me to file an affidavit?

THE COURT: Well, let's be a hundred percent clear. Your client would state that with the granting of the motion to withdraw proof of claim number 146, HCRE is irrevocably waiving the right to ever challenge Highland Capital Management's 46 percent interest -- and I know it's 46-point something -- 46 percent interest in SE Multifamily Holdings, LLC and is, likewise, waiving the right to appeal or challenge the order to this effect.

MR. MORRIS: Your Honor, if I may, perhaps we can take a ten-minute recess and allow him to consult with his client and perhaps get a client representative on the phone who can make that representation?

THE COURT: All right. Mr. Gameros, you think you

can get a client rep on the WebEx?

MR. GAMEROS: I'm pretty sure I can, Your Honor.

THE COURT: All right. Well, how about we take a 15-minute recess. Does that sound a reasonable amount of time? We've got, you know, two dozen people --

MR. GAMEROS: It does, Your Honor.

THE COURT: Two dozen people on the WebEx. I don't know if maybe one is a client representative, but we'll take a 15-minute break and I'll come back. Okay.

THE CLERK: All rise.

(Recess at 10:33 a.m./Reconvened at 10:50 a.m.)

THE CLERK: All rise.

THE COURT: Please be seated.

We're back on the record in Highland.

Mr. Gameros, how did you want to proceed now?

MR. GAMEROS: Your Honor wanted me to get a representative of NexPoint Real Estate Partners to state that they agree that the estate has its 46 percent interest in the company agreement subject to the company agreement. And I've got Mr. Sauter here who has authority to speak on behalf of NexPoint Real Estate Partners.

THE COURT: All right. Well, so what is his position with HCRE?

MR. SAUTER: Your Honor, I don't have -- this is DC Sauter. I don't have an official position with HCRE, but I

have spoken with Mr. Dondero and he has authorized me to appear here today and agree to the conditions that Mr. Gameros just outlined.

THE COURT: All right. Well, it sounds like hearsay to me. I don't know -- Counsel, let me have you both respond. You know, I worry about this will fall apart the minute Mr. Dondero is instructing a lawyer, I never agreed to that. I mean I just don't know. This is highly unusual.

First --

MR. GAMEROS: Your Honor, if I might?

THE COURT: Please.

MR. GAMEROS: Mr. Sauter is an officer of the Court. He works, you know, with Mr. Dondero at his business at NexPoint; certainly an authorized agent on behalf of NexPoint Real Estate Partners to make this agreement on behalf of NexPoint Real Estate Partners.

To the extent that the condition that you originally described as a conclusory matter, in other words, how to end the withdrawal, we already agreed to that, that we also can agree on the record to waive any appeal. Mr. Sauter is authorized to agree to that, as well.

So I think as an agent and a lawyer on behalf of NexPoint Real Estate Partners, he's fully able to do that.

THE COURT: How do I know he's able to do that?

And, by the way, if Mr. Dondero is in I guess the

last 15 minutes given him authority to testify before the Court, why couldn't Dondero just get on the WebEx himself?

MR. SAUTER: Your Honor, I think he felt more comfortable with me being a lawyer agreeing to those terms so that he wouldn't misstate something. He has been listening. I believe he's still on, although I'm not certain.

THE COURT: Mr. Morris, do you want to respond? I mean I'm not sure, frankly, I care what you say, no offense. I don't think I have a person with clear authority here.

MR. MORRIS: I'll just be quick and say I agree.

THE COURT: Okay. Mr. Gameros --

MR. GAMEROS: As an attorney for NexPoint Real Estate Partners, I have the authority to make that agreement on the record and it be binding. Mr. Sauter is confirming that authority having spoken with Mr. Dondero about it.

I think that the Court is fully --

THE COURT: Mr. Gameros --

MR. GAMEROS: -- capable of doing that --

THE COURT: Mr. Gameros, come on. You know this is the client's decision to make. Okay. I don't have a client representative. I don't have an officer or controlling equityholder as evidence here of --

MR. MORRIS: Mr. Dondero --

THE COURT: -- the willingness to make the agreement.

Pardon?

MR. MORRIS: Can Mr. Dondero make the representation on the record to the Court that he is authorizing Mr. Sauter to waive any claim that HCRE has to Highland's 46.06 percent interest in SE Multifamily along with any appeal? This is just step one. But if Mr. Dondero was on the phone, let him speak up and make it crystal clear that he is delegating the full authority to Mr. Sauter to negotiate and enter into this consensual order on behalf of HCRE.

THE COURT: All right. Mr. Gameros, do you want to give your client authority to speak up? Your client representative, someone who's actually an officer or a controller or equity owner?

MR. GAMEROS: Your Honor, if Mr. Dondero can do that, that would be great. I don't know if he's in a place where he can do that.

THE COURT: All right. Mr. Dondero, if you can hear us, are you willing to give some quick testimony in that regard?

(No audible response)

MR. DONDERO: I can't see the box --

UNIDENTIFIED SPEAKER: Surprising that -- surprising he was on the phone before, but now he's not after delegating. Just I'm not --

MR. SAUTER: Your Honor, he's on the phone. I'm just -- if you will give me a minute, I got to run around the corner

and try to make sure he knows how to unmute himself.

THE COURT: Star 6. If he's on a phone, star 6 is the way to unmute himself. But I want to see video, too.

THE OPERATOR: There we go. Try again.

MR. DONDERO: Hello?

THE COURT: All right.

MR. DONDERO: Hello?

THE COURT: Mr. Dondero, is that you?

MR. DONDERO: It's me. I've been on the entire time.

THE COURT: All right. Can you turn your video on, please?

MR. DONDERO: I am on my cell phone.

THE COURT: Okay. Well, so I guess you just called in on your cell phone, you don't have a WebEx connection on your cell phone?

MR. DONDERO: I don't have a WebEx.

THE COURT: Okay. Well -- yeah, it sounded like you were in the same office as Mr. Sauter. Is that -- did I misunderstand?

MR. DONDERO: We work in the same office. I'm in my car. I just stepped out of my car.

THE COURT: All right. Well, this is not ideal, you know, without us seeing you. But I'll go ahead and swear you in. All right. Can you hear me okay? I need to swear you in.

MR. DONDERO: Yes.

THE COURT: All right.

JAMES DONDERO, HCRE'S WITNESS, SWORN

THE COURT: All right.

Mr. Gameros, do you want to ask him the questions we need to hear answers on, please?

MR. GAMEROS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. GAMEROS:

Q Mr. Dondero, on behalf of HCRE, do you agree as a condition for withdrawing the proof of claim that HCRE will not challenge the estate's ownership or equity interest in SE Multifamily subject to the company agreement?

A Yes.

Q Do you agree that you will not appeal and that, therefore, HCRE is waiving any appeal right to that determination as a condition of withdrawing the proof of claim?

A Yes.

MR. GAMEROS: Those are the questions for Mr. Dondero.

MR. MORRIS: Your Honor, if I may?

THE COURT: Mr. Morris, you may.

MR. MORRIS: I'm very uncomfortable. I'm very uncomfortable with the inclusion of the language subject to the company agreement. It sounds like a very conditional waiver. We need an irrevocable unconditional admission by HCRE that

Highland owns 46.06 percent of SE Multifamily, period, full stop. If they want to keep conditions in there and make it conditional and make it subject to other things, let's please deny the motion and proceed to trial.

THE COURT: All right. Well, Mr. --

MR. GAMEROS: The equity that they own is part of the company agreement. It's not modifying the company agreement by saying.

THE COURT: Well --

MR. MORRIS: Our ownership is not subject to the agreement. We either have an ownership interest or we don't. Our rights and obligations as a member of SE Multifamily are subject to the agreement, but our ownership interest is not. And that's the ambiguity that we need to remove.

THE COURT: Okay. Well, Mr. Gameros, do you want to rephrase the question or are you not willing to make the agreement as specific as Mr. Morris says he needs it?

MR. GAMEROS: That's what I'm -- I guess I don't understand what his complaint is. If the estate owns 46 percent of the equity of SE Multifamily, it owns that subject to the company agreement. It's not a separate ownership interest. So I don't know what the problem is.

THE COURT: Okay. Let me try to phrase it as I understand it.

What I understand has been asserted in the proof of

claim is that what was set forth in the agreement was a mistake, okay. A mistake. And it sounds like you're using language that says we'll agree the agreement, you know, they have a 46 percent interest pursuant to the agreement. But that doesn't change -- that does not really zero in on the argument made in the proof of claim that there was a mistake in the agreement, right?

So you'd have to go broader to completely resolve the issues raised in your proof of claim and say we agree, Highland has a 46.06 interest in SE Multifamily and we agree that is correct and we waive any right to challenge it in the future and we waive any right to appeal this order.

MR. GAMEROS: And, Your Honor, if that's the condition, I guess my concern is that the 46 percent is still part of the company agreement. We agree not to challenge it on the basis of anything asserted in the proof of claim, that being mistake, lack of consideration, or failure of consideration. Their 46 percent is their ownership interest in SE Multifamily and HCRE won't challenge that.

Is that sufficient?

THE COURT: Well, I need to hear from your client. I mean he needs to be asked every which way from Sunday whether he is waiving the right to challenge Highland's 46.06 interest from now until eternity, okay. That's basically, you know, we either have that agreement or we'll just have a trial.

CONTINUED DIRECT EXAMINATION

BY MR. GAMEROS:

Q Mr. Dondero, do you agree that NexPoint Real Estate Partners will not challenge in any way the estate's interest in SE Multifamily, its 46-point whatever percent interest that is?

A I think the nuance is that agreement is okay in current as of today. But it's part of an operating agreement, and that percentage ownership can change due to capital calls and other things. And it could change over time. It's never in a partnership agreement fixed into perpetuity. And so no businessman can agree to that.

If the Court wants it fixed into perpetuity, that would be very odd.

MR. MORRIS: Can we go to trial, Your Honor? Can we just deny the motion and go to trial? Let me have my depositions and go to trial. This is -- if Mr. Dondero wants to take that position, he's welcome to do that. But I'm entitled to finality, and I'd like to get there.

THE COURT: All right. Well, Mr. Gameros, anything else you want to ask your client that you think might be helpful?

BY MR. GAMEROS:

Q Mr. Dondero, you desire to withdraw the proof of claim. Correct?

A Yes.

Q And you agree to an order denying the proof of claim with prejudice. Correct?
A Yes.
Q And can you agree that HCRE will not challenge the equity ownership of its member in SE Multifamily of the estate?
A Yes.
MR. GAMEROS: Your Honor, I think there it is.
THE COURT: Mr. Morris, do you have any --
MR. GAMEROS: He agrees.
THE COURT: -- do you have any follow-up questions --
MR. MORRIS: The waiver of the right to --
THE COURT: -- Mr. Dondero?
MR. MORRIS: The waiver of the right to any appeal whatsoever. And I do have -- you know, there are the other conditions that we mentioned earlier, right? Either they have to also agree that Mr. Seery's deposition transcript shall never be used for any purpose at any time or they need to level the playing field and submit their witnesses to examination.
The playing field needs to be level here. Either if they want to use that deposition transcript for some purpose, I have no problem with that. Just let me take my depositions. If they don't want to submit their witnesses to depositions, then they also have to agree that that transcript will never be used for any other purpose. It's as if this proof of claim has never been filed, right, for that purpose, right. Because

that's just not fair. That's the legal prejudice.

How do you take my client's deposition on Wednesday and file this motion on Friday knowing your client's supposed to be deposed on Tuesday? Level the playing field. That's conditional number two.

And condition number three, frankly, Your Honor, this proof of claim was fraudulent. I mean my client has been damaged. My client has spent an enormous amount of money on this, and I'd like them to agree to if not make us whole, you know, do something because it's wrong. It's just wrong that Mr. Dondero files proofs of claim under penalty of perjury that have absolutely no basis in fact.

It's distressing. I'd like those two last issues addressed, as well.

MR. GAMEROS: Your Honor, in terms of the Court's questions in terms of finality with respect to the membership interest in SE Multifamily, Mr. Dondero agrees with the Court. He's already said that he won't waive -- that he waives, rather -- I'm sorry, let me start again.

He has said very clearly that he has waived appeal of this order allowing the withdrawal of the proof of claim with the conditions that you asked for. I think you should grant the motion to withdraw and we can put an end to all of this.

THE COURT: Okay.

MR. MORRIS: Here's the thing, Your Honor. We know

but it's also a big deal because we want to make sure only parties with legitimate claims are given a seat at the table, so to speak, in bankruptcy as far as, you know, their right to a distribution, their right to be heard in a case.

So, you know, that's the reason for the rule. We don't see it come into play very often, but it's there because we want to make sure that we protect the integrity of the bankruptcy process. And if someone files a proof of claim and it's pending and, you know, activity happens in the bankruptcy case as a result of it, that we don't just let a party say never mind.

So the Manchester case, which you both cited in your pleadings, has set forth fact-intensive factors -- fact-intensive inquiry. And, again, I'm just looking at HCRE's motion, Page 7. There was a chart and it sets forth the Manchester factors. Factor number one, diligence in bringing the motion to withdraw the proof of claim.

In Mr. Gameros' chart, his response to that factor is that HCRE brought its motion to withdraw immediately after conferring with debtor's counsel. I don't even know what that means, okay. But what I do know is in looking at diligence of bringing the motion, the proof of claim was filed April 8th, 2020. It was objected to, the proof of claim, July 30th, 2020. And then on August 12th, 2022, this motion to withdraw the proof of claim was filed.

So two years and one month after the objection was filed to the proof of claim HCRE withdraws it. So that doesn't seem very diligent. It's not diligent at all, to be honest.

Your second factor, you cited, Mr. Gameros, undue vexatiousness, and you say HCRE has not been vexatious in pursuing its proof of claim. And outside the motion to disqualify previous counsel, which is not substantive, everything in the matter has proceeded by agreement and there have been no hearings set or held.

Okay. Well, debtor has represented in its pleadings and today through counsel on the record that it has spent hundreds of thousands of dollars litigating this. It has mentioned that four depositions have been taken. It was Mr. Mark Patrick. It was the tax accounting firm. We had the B -- the entity -- BH Equities, LLC, their representative. And then Mr. Seery. So four depositions, and I'm told a lot of written discovery.

And on the day before the -- well, the day after, day or two after the Seery deposition, the motion to withdraw the proof of claim was filed after 5:00 in the evening on a Friday, August 12th, and I guess a couple of business days before the depositions were to occur of Mr. Dondero and the fellow, Mr. McGraner, and I feel like there was one other deposition. I'm losing track of those.

But --

THE CLERK: The 30(b)(6).

THE COURT: Oh, the 30(b)(6). The 30(b)(6) representative.

So on top of all of that, you know, Highland argues there was just simply no good-faith basis for the proof of claim. Proof of claim asserted the membership interest, Highland's 46.06 interest, set forth in the Multifamily LLC agreement were the result of mistake.

Mr. Dondero signed the agreement for both parties, HCRE and Highland. And then now the motion to withdraw says something to the effect of the anticipated issues have not materialized. So anyway, the undue vexatiousness factor I think weighs -- because of these factors I've mentioned, weighs in favor of there has been undue vexatiousness.

Factor number three, according to HCRE's motion to withdraw the proof of claim, is matter's progression including trial preparation. Again, four depositions, thousands of pages of written discovery. We were days away from the last depositions occurring, those of HCRE's potential witnesses and we have trials set. We have a trial set in November. So that factor, again, seems to weigh heavily in favor of Highland's objection here.

Duplication of expense of relitigation, here's why we got Mr. Dondero on the phone or wanted to have a witness with authority. Highland is saying we are concerned about

relitigation of this ownership interest issue. And as part of its argument, Highland has said we've got claims, we've got our own claims for breach of agreement and different things that are going to cause us to have to drill down on terms of the LLC agreement.

And we can't -- we don't want to face exposure on this issue of, well, you don't have the ownership interest or the rights you say you do, Highland. So, you know, if we could get ironclad language here of, you know, we waive the right, we agree that Highland has the 46.06 interest and we waive the right to challenge that, then I don't think we'd have to worry about relitigation of the issues in the proof of claim. But it feels like we had a little bit of reluctance to say it as forcefully as we would need to have it said to avoid relitigation.

Reason for dismissal, I don't know. I don't know what the reason for dismissal. Again, to quote HCRE's pleading on Page 7, the reason for dismissal is, "The operation of the company" -- I think that means SE Multifamily -- "during the case and the anticipated issues therewith have not materialized and NREP no longer desires to proceed in the matters raised in the proof of claim."

I mean that's just not in sync with the theory espoused in the proof of claim that we think there was a mistake made in the LLC agreement. So, again, looking at these

legal factors, I do not think that the correct result is to grant the motion to withdraw the proof of claim under Rule 3006 under the Manchester factors. I will throw in that I think there is potential for prejudice here of the debtor.

I mean not even considering that hundreds of thousands of dollars have been spent over two-plus years on this issue, you know, I remember very well the disqualifying motion. And I said Wick Phillips should be disqualified. I didn't shift fees because I just wasn't sure at the time that, frankly, HCRE should be imposed with the fees attributable to its lawyers, not recognizing the conflict of interest when they saw one. It was just a little fuzzy in my mind.

But I'm just letting you know that now that we are here many years later, many months later and we have all the sudden, okay, never mind, this is just a situation where I have some regrets I didn't shift fees, to be honest. But -- so the motion is denied. The depositions shall go forward. I'm not sure, you know, if the dates that have been proposed are still workable, but if someone wants to speak up now about those deposition dates to avoid an emergency hearing, I'm willing to hear that.

I think what I heard was, well, I don't know what -- have you talked about dates at all? Probably not, Mr. Morris, in light of this hearing today.

MR. MORRIS: We have not, Your Honor. But I do think

that Counsel and I can work that out. I'm not available until the week of the 26th. So it won't be early that week but sometime between let's say the 28th of September and the 7th of October, I'll be prepared to take these depositions. And I would respectfully request, and we can work with Ms. Ellison to try to find a trial date sometime the last week of October, first week of November so we can get this finished.

THE COURT: Okay. Did I dream up that there was a trial set already in November?

MR. MORRIS: You know what?

You know what, let's just keep that date, Your Honor. Let's just keep that date.

THE COURT: All right. Traci, are you still on the line? Can you confirm my memory? I thought we had a two-day trial set aside for this in November.

MS. ELLISON: Is this on the merits of HCRE's claims, Judge Jernigan? I have a note holding November 1 and 2.

THE COURT: Okay.

MR. MORRIS: Yeah.

THE COURT: So we'll go ahead and mark that down.

Now the last -- so you'll work on an a mutually agreeable date for these three remaining depositions sometime, you know, late September, early October. And I trust you will --

MR. MORRIS: Yeah. I would respectfully request that

Counsel just propose dates for the depositions. I'll wait to hear from him. But I think -- I'm representing to the Court that any time between September 28th and let's just give it two full weeks, October 12th. That's plenty of time in advance of the trial.

THE COURT: All right. Mr. Gameros, anything you want to add on that?

MR. GAMEROS: No, Your Honor. I'm sure we can work with Mr. Morris to get those scheduled.

THE COURT: All right. And here's actually the last thing I wanted to say.

You know, I had thought about, you know, waiting 24 hours to give you a ruling on this motion to withdraw the proof of claim and directing you all to kind of talk and see if maybe you could work out language, you know, without the pressure of the Court hovering over you that could make both of your clients satisfied.

I still encourage you to do that, but I'm going to pick on our U.S. Trustee. I see she's observing today, and I'm not going to ask you to say anything, Ms. Lambert. But if you all do agree, if you all in the next, you know, 24 hours come to some sort of agreement, I don't mean to be alarming, but I want it run by the U.S. Trustee because, you know, I've heard some things that have troubled me about the, you know, lack of good faith with regard to the proof of claim and, you know,

alleged gamesmanship.

And, you know, I talked earlier about this goes to the integrity of the system, you know, filing a proof of claim under penalty of perjury. Anyway, I'm feeling a little bit uncomfortable about signing off on an agreed order where there may be quid pro quos that went back and forth in connection with withdrawing a proof of claim. I mean at some point -- well, that's why we have scrutiny of these things under Rule 3006, right?

Again, there are integrity issues. And so I just -- you know, if you were to work out language, I want you to run it by Ms. Lambert and I want to hear that either she was okay with it or she wasn't okay with it or maybe she declines to comment. You know, I'm not going to tell her how to do her job, but I feel like that needs to happen, okay?

It's just something uncomfortable going on in my brain about, you know, again a proof of claim being on file two, almost two and a half years and then, you know, okay, never mind, okay, I agree to never mind as long as you agree to XYZ.

And I have no idea what's in the Seery transcript. I don't have it before me. But, you know, I don't even know what that's all about. I don't even know if I care what that's all about. I just know if there are quid pro quos I feel like, you know, maybe I need to have the U.S. Trustee, you know, not per

se signing off on any agreed order but at least kind of looking at it and telling me either U.S. Trustee's fine with it, U.S. Trustee is not fine with it, or U.S. Trustee declines to comment. Just I know that I've gone through the drill, okay?

So just letting you know I am still, you know, all open to an agreed resolution of this, okay. But we're going forward as if you can't get there, okay?

All right. I'll look for -- what am I going to look for? I'm going to look for an order denying the motion to withdraw proof of claim. I'm going to look for an order granting the -- well, an order resolving the objection to motion to quash and cross-motion for subpoenas saying that these three witnesses are going to appear at a mutually agreeable time either late September or early October.

All right. We're adjourned.

THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

(Proceedings concluded at 11:35 a.m.)

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C E R T I F I C A T I O N

I, DIPTI PATEL, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Dipti Patel

DIPTI PATEL, CET-997

LIBERTY TRANSCRIPTS DATE: September 13, 2022

EXHIBIT W

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Wednesday, August 4, 2021
	9:30 a.m. Docket
Debtor.	
	- STATUS CONFERENCE RE: APPLICATION FOR ADMINISTRATIVE EXPENSES (1888)
	- MOTION FOR ORDER AUTHORIZING SALE OF CERTAIN PROPERTY (2535)
	- MOTION FOR ORDER AUTHORIZING SALE OF CERTAIN LIMITED PARTNERSHIP INTERESTS (2537)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

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motions.

THE COURT: All right. Anything else before I give a ruling?

All right. Well, the Court, of course, has jurisdiction over these two motions. I'll call them the Maple Avenue Motion and the PetroCap III Motion. The Court will specifically note for the record that notice has been proper under the Rules and sufficient. I'd note that July 8th these motions were filed.

The Court will also note for the record that the only objections that were lodged to these motions were withdrawn during the hearing before the evidence, as were separate bids that had been submitted. Thus, there are no pending objections, no pending bids at this juncture.

363(b) of the Bankruptcy Code applies to these proposed transactions.

With regard to Maple Holdings, this is, of course, technically a motion under 363(b) for approval for the Debtor to exercise its management rights in Maple Avenue Holdings, LLC to cause Maple Avenue Holdings, LLC to sell the real property at 2817 Maple Avenue, Dallas, Texas. So it's a usage, I guess you could say, of property outside the ordinary course of business.

And then with regard to the PetroCap III transaction, once again, 363(b) is the governing authority. The transaction is

either in the nature of a sale or usage in the form of a forfeiture of certain of the limited partnership interests and other rights in the agreements described in the motion.

The Court finds that the evidence very well demonstrated a sound business justification for both of these transactions and a reasonable business judgment has been exercised and these transactions are in the best interests of the estate.

First, with regard to the Maple Avenue transaction, the evidence showed that the purchase price, $9.75 million, is certainly within the range of market values that expert brokers and the Debtor's informal marketing process revealed. The Court believes that the Debtor and its professionals marketed the property appropriately, and this appears to be a sale process that has been undertaken in good faith without conclusion -- without collusion, I should say. The purchaser, Stonelake Capital Holdings, LP, is not an insider, and again appears to be a participant in an arm's length, good faith, and fair transaction.

The Court is not in the least troubled that we didn't have an auction. While auctions in the universe of Chapter 11 are a very common protocol, there's nothing in the Bankruptcy Code or Bankruptcy Rules that requires a public auction. And when we're talking about real estate, it's very common not to have an auction.

But in any event, the Court reiterates that the marketing

of this property and the sale process appear to be in all ways adequate and in good faith and have yielded fair value for the property. In any event, this is the highest and best offer the Debtor received.

So the Court approves the Maple Avenue Holdings, LLC transaction. The Court reserves the right to supplement this ruling in a written form of order.

Turning now specifically to PetroCap III, the Court likewise believes that there has been a reasonable effort on the part of the Debtor to maximize the value of these interests and rights. The Court believes that this transaction is the highest and best transaction that can be achieved by the estate. The Court believes this was arm's length and that all parties, including PetroCap, have acted in good faith. And so I should add both of these transactions are going to be free and clear of any interests, with those interests to attach to the proceeds.

The Court once again reserves the right to supplement in a more fulsome written ruling, but the Court hereby approves the PetroCap transaction.

To the extent these parties have asked for waiver of the 14 days under 6004, I can't remember if that request was made on both transactions or just the real estate transaction. Is that a request for both transactions, Mr. --

MR. POMERANTZ: Your Honor, I'm not sure it's even a

request for the Maple, because I think the closing is not expected to occur until after that 14-day period.

THE COURT: Okay.

MR. POMERANTZ: With respect to PetroCap, I'll ask Mr. Demo. Since he was going to present the specific facts, he may know the answer to whether we asked for the 14-day stay waiver there.

MR. DEMO: We did ask, Your Honor. Again, this is Greg Demo from Pachulski Stand Ziehl & Jones. So if we could have the 14-day waiver, that would be wonderful.

THE COURT: All right. Well, given that we have no objection and so no concern for an appeal, and otherwise given the circumstances of this transaction, I think that it is a reasonable request -- I see it right now -- to waive 6004(h). And so that request is granted. All right.

MR. DEMO: Thank you.

THE COURT: Well, is there any more business before we adjourn?

MR. POMERANTZ: Nothing from the Debtor, Your Honor.

THE COURT: All right. Well, I thank you all. You know, I'm --

MR. POMERANTZ: Your Honor, I just may point out that we do expect to be going effective either the end of this week or sometime beginning to middle of next week. So there'll obviously be a watershed event in the case that has been --

pretty much gone with these contempt motions.

And, again, read my last paragraph. I can understand getting bored reading that thing, but please read the last paragraph to know that it's going to get worse if we have another one of these hearings and I do find contempt.

So, all right. Well, we will see you all I guess on the 19th is my next -- I think that's where we have our next hearing.

(Proceedings concluded at 11:31 a.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **08/05/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber